AL EDUCATION

BY

Messrs. INDERMAUR & THWAITES,

FOR THE

SOLICITORS' FINAL (Pass & Honours) & INTERMEDIATE

MR. JC ...man, Nov... ...amon Law," "M ...omes of Leadin... ...LES THWAIT... ...and Real Prope ...rdon Prizeman, ...uide to Crimina... ...dents for the al ...ough the post.

A four ...r the Solicitors' ...often advisable i... ...cially desirous of taking Honours.

A three months' course of reading is recommended for the Bar Final, and for the Solicitors' Intermediate.

Full particulars can be obtained, either personally or by letter, from Messrs. INDERMAUR & THWAITES. at their Chambers,

22, CHANCERY LANE, LONDON.

THE STUDENT'S GUIDE

TO THE LAW OF

REAL AND PERSONAL PROPERTY

AND

CONVEYANCING.

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TO THE LAW OF

REAL & PERSONAL PROPERTY

AND

CONVEYANCING.

BY

JOHN INDERMAUR, SOLICITOR

(*First Prizeman, Michaelmas*, 1872),

AUTHOR OF "PRINCIPLES OF COMMON LAW," "MANUAL OF EQUITY," "MANUAL OF PRACTICE," "THE STUDENT'S GUIDE TO COMMON LAW," ETC., ETC.

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ADVERTISEMENT TO FOURTH EDITION.

THE Third Edition of this work having gone out of print, this new Edition is now issued. The advice to Students on reading and the Digest of Questions and Answers have been carefully revised, some former ones having been eliminated and new ones introduced. All the Questions and Answers on the subject at the Bar Final Examination have received consideration down to and including the last one, viz., Trinity Term, 1897. It is hoped that Bar Students will find the work complete and reliable, and that it may also prove of some assistance to Candidates for the Solicitors' Final Examination who desire to study a Digest of Questions and Answers on Real and Personal Property and Conveyancing. In the Advertisement at the end of the book will be found particulars of similar Guides on other subjects.

Messrs. INDERMAUR and THWAITES continue to prepare Students, both in class and privately, for the Bar Final Examination, Solicitors' Final (Pass and Honours) Examinations, and the Solicitors' Intermediate Examination. Particulars on application, personally or by letter, to Messrs. Indermaur and Thwaites, 22, Chancery Lane, W.C.

1*st October*, 1897.

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THE STUDENT'S GUIDE

TO THE LAW OF

REAL AND PERSONAL PROPERTY

AND

CONVEYANCING.

I.—THE COURSE OF READING.

THE design of this Guide is to assist law students in general, and in particular those reading for the Bar Final Examination. We propose to give our readers general advice and assistance by suggesting what they should read, furnishing them with certain material to read, giving a set of Test Questions, and finally concluding with a Digest of Questions and Answers framed from the actual questions hitherto asked at the Bar Final.

The consolidated regulations of the Inns of Court as to a call to the Bar, dated January, 1894, prescribe that for call to the Bar it shall be obligatory to pass an examination in Roman Law, and in such of the following heads of the English Law and Equity as the Council of Legal Education shall from time to time determine, *i.e.* :—

Constitutional Law (English and Colonial) and Legal History.
English Law and Equity, viz. :—

(*a*) Law of Persons, including Marriage and Divorce, Infancy, Lunacy, Corporations.

(*b*) Law of Real and Personal Property and Conveyancing—including Trusts; Mortgages; Administration of assets on

death, on dissolution of partnerships, on winding up of companies, and in bankruptcy; and Practical Instruction in the preparation of Deeds, Wills and Contracts.

(*c*) Law of Obligations—Contracts; Torts; Allied subjects (implied or quasi contracts), estoppel, &c.; Commercial Law, with especial reference to Mercantile Documents in daily use.

(*d*) Civil Procedure, including Evidence.

(*e*) Criminal Law and Procedure.

At the time of writing, the examination for call to the Bar, comprises a printed paper, and a *vivâ voce* examination on—

(1) Roman Law.
(2) Constitutional Law and Legal History.
(3) Elements of the Law of Real and Personal Property and Conveyancing.
(4) Law and Equity, Paper I. (Common Law).
(5) Law and Equity, Paper II. (Equity).
(6) Evidence, Queen's Bench Procedure, and Criminal Law and Procedure.

And each examination is announced to be confined to the subjects dealt with by the readers and assistant readers in their lectures and classes for a period of two years before the examination.

The object of the present Guide is to give some assistance to students in preparing for the paper and *vivâ voce* examination on the Elements of the Law of Real and Personal Property and Conveyancing; and especially to help those who find themselves prevented from attending regularly a course of lectures and classes for two years.

The Honours Examinations in connection with the Bar Final are now held twice in each year. They are open to students who are under 25 years of age. At each such examination, one studentship of £105 yearly for three years is awarded, and certificates of honour are also awarded, and a pass certificate entitling to call to the Bar, without further examination, may be awarded to any candidates who do not get honours. A student who has passed the Bar Final can subsequently sit for the Honours Examination before he is called.

The following subjects have been dealt with in the lectures for Hilary, Easter, Trinity, and Michaelmas Terms 1895, 1896 and 1897:—

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8. Guardians, different kinds of. Powers with regard to property. Settlements by infants.

The student is recommended to study on the lines of the lectures. The student who desires to attain a thorough knowledge rather than to merely satisfy the very reasonable demands of the examiners, will find the following a good course of reading :—

1. Read Williams' Real Property,
2. Read Williams' Personal Property.
3. Read Goodeve's Modern Law of Real Property, or Edwards' Compendium of the Law of Property in Land.
4. Read Goodeve's Law of Personal Property.
5. Make a separate reading of the Conveyancing and Settled Land Acts.
6. Read Strahan's Law of Property.
7. Read Tudor's Leading Cases on Conveyancing.

8. Read Elphinstone's Introduction to Conveyancing and the dissertations in Prideaux's Conveyancing, referring to some of the Precedents.
9. Specially analyze and consider the Statutes, of which a list is given in this work (*post*, page 56).

We think that the works might well be read in the order above detailed; but certainly, to conclude, Williams' Real Property and Williams' Personal Property, or Goodeve's Real Property (or Edwards' Compendium of the Law of Property in Land) and Goodeve's Personal Property should be read again.

With regard to Tudor's Conveyancing Cases, if the student should not be able to read the whole work, we give a list of the most important cases, and would remark that the notes to these cases are even more important than the cases themselves:—

Alexander v. Alexander.
Bowles' (Lewis) Case.
Braybroke (Lord) v. Inskip.
Cadell v. Palmer.
Corbyn v. French.
Elliott v. Davenport.
Fox v. Bishop of Chester.
Gardner v. Sheldon.
Griffiths v. Vere.
Hanson v. Graham.
Morley v. Bird.
Pawlett v. Pawlett.
Richardson v. Langridge.
Shelley's Case.
Stapleton v. Cheales.
Sury v. Pigot.
Tyrringham's Case.
Viner v. Francis.
Wild's Case.

The really industrious student will read these cases and notes from "Tudor," but, in doing so, he will find it an advantage to have by him "Indermaur's Epitome of Leading Conveyancing and Equity Cases," which contains all the above; and, having read the particular cases and notes in the large volume, he can then turn to the Epitome and read that, and, very likely, may be able to add to the notes there. In default of reading the large work, a perusal of the cases and notes in the Epitome will be of service.

With regard to the Conveyancing and Settled Land Acts the student should read any good edition, say Wolstenholme and Turner, or Hood and Challis. If time permit, he will find the notes following the various sections of great service. Some of the sections are long and complicated, and an Epitome of the Acts will manifestly be of service. We have therefore given such an Epitome of these Acts, and of the Vendor and Purchaser Act 1874, and parts of the Land Transfer Act 1897 (see *post*, pp. 12-55), and this should be studied in conjunction with the Acts; the condensation of the sections will tend to impress their provisions on the student. Some students may perhaps only find time to go through the Epitome, though here and there they will find it necessary to refer to the Acts.

Students, who are not disposed to take up and consider Prideaux's Precedents, will find a useful small substitute in Clarke's Students' Conveyancing Precedents.

As to taking notes, they are useful in moderation, but great moderation should be observed. It is useless to put down in a note-book a lot of points merely for them to stop there and not be remembered.

With regard to our list of Statutes, a great many of them will be found sufficiently touched upon in the works we have set for the student's reading; but, if time permit, it will be found very advisable to also consider them separately, either by reference to the text-books, or, in some cases, to the

Statutes themselves, and, to save time, an epitome of them will be found extremely useful. We recommend Marcy's Epitome of Conveyancing Statutes; and, as to the Conveyancing and Settled Land Acts, we have already dealt with them specially, and given in this work our own Epitomes of them (*see post*, pages 12-55).

Thus, then, we have mapped out for the student what we consider a very thorough course of reading. We wish now to deal with students who have not time, or who are not willing, to go through so much, and to these we would say, omit Strahan's Law of Property and Tudor's Conveyancing Cases, but do not fail to read the cases given (and the notes) in Indermaur's Epitome of Conveyancing and Equity Cases. A separate study of the Statutes, other than the Conveyancing and Settled Land Acts, may no doubt also be omitted. All should, however, strive to commit to memory the references to, or short titles of, the most important of the Statutes.

Finally, we have to deal with those who will not, or cannot, even go through this modified course, meaning to do only what is actually essential. To such we can only say omit also Williams' Real Property, Williams' Personal Property, Edwards' Compendium, and Prideaux, and that will leave for essential study Goodeve's Real Property, Goodeve's Personal Property, Elphinstone's Conveyancing, the Conveyancing and Settled Land Acts, Epitome of Cases, Clarke's Students' Precedents, and something in the shape of a consideration of the Statutes. If time is very pressing we may also add that it *may* be sufficient as regards Goodeve's Personal Property to read only Chapters 6, 13, 16 and 20.

All classes of readers should, however, carefully study the Test Questions, and the Digest of Questions and Answers given in this work (see *post*, pages 60 and 71, *et seq*). As to the Test Questions, they should be considered and studied during, or directly after, a perusal of the text-books,

and it will be excellent practice to write out answers to the Test Questions, or, at any rate, to a number of the more important of them. These Test Questions are mainly founded on Mr. Williams' and Mr. Goodeve's works. The final study with every one, to conclude the course of reading, should be the Digest of Questions and Answers, for, by means of those, the student's knowledge is focussed and brought as it were to a point.

II.—EPITOME OF STATUTES.

37 & 38 Vict., C. 78.

Vendor and Purchaser Act, 1874.

Sec. 1.—On contract for sale of land, purchaser entitled to have a 40 years' title, unless otherwise agreed.

Sec. 2.—(1.) On contract to grant, or assign, a term of years, the intended lessee or assignee may not call for title to the freehold.

(2.) Recitals of fact, in documents 20 years old at the date of the contract for sale of land, shall be deemed sufficient evidence unless proved false.

(3.) If purchaser will have equitable right to production of title deeds, he cannot object because vendor is unable to give him a legal covenant for production.

(4.) Covenants for production must be paid for by purchaser.

(5.) Vendor may keep deeds if he retains any part of estate to which they relate.

Sections 3 to 7 are repealed.

Sec. 8.—If a will of land in Middlesex or Yorkshire is not registered within six months after the death, a conveyance by the devisee has priority (if registered first) over one by the heir.

Sec. 9.—Disputes between a vendor and purchaser of land (which do not affect the existence or validity of the contract) may be decided by a judge in chambers on originating summons.

44 & 45 VICT., C. 41.

Conveyancing and Law of Property Act 1881.

(*Commencement of Act, 1st January*, 1882.)

Part I. (*secs.* 1 *and* 2)—*is Preliminary and gives Definitions.*

Part II.—Sales and other Transactions (*secs.* 3 *to* 9).

Sec. 3.—(1.) Under a contract to sell and assign a term of years derived out of a leasehold interest in land, the intended assign has no right to call for the title to the leasehold reversion.

(2.) A purchaser of enfranchised copyholds has no right to call for the title to make the enfranchisement (*i.e.*, the title to the manor).

(3.) A purchaser of any property shall not require any abstract or copy or production of any instrument affecting the title prior to the time fixed (by law or agreement) for commencement of the title, even although the same creates a power exercised by an instrument abstracted in the abstract furnished to purchaser; and no prior enquiry to be allowed; and recitals in abstracted documents as to prior title to be presumed correct unless contrary appears.

(4.) Where land sold is held by lease (not including underlease), purchaser shall assume (unless the contrary appears) that the lease was duly granted; and, on production of receipt for the last payment due for rent, shall assume, (unless the contrary appears) that the rent and all covenants have been duly paid and performed up to completion.

(5.) Where land sold is held by underlease, the purchaser shall assume (unless the contrary appears) that the underlease and every superior lease were duly granted; and on production of receipt for the last payment due for rent, shall assume (unless the contrary appears), that the rent and covenants have been duly paid and performed up to completion of the purchase, and further that all rent due under every superior lease, and all covenants therein, have been duly paid and performed up to that date.

(6.) On a sale of any property, the expenses of the production and inspection of all documents *not in the vendor's possession* (*Re* Willett, 60 L. T., 735), and the expenses of all journeys incidental to such production or inspection, and all other expenses relating thereto, and all attested, stamped, office or other copies thereof, shall be borne by the purchaser; and, where the vendor retains possession of any document, the expenses of making any copy which a purchaser requires shall be borne by such purchaser.

(7.) On a sale of any property in lots, a purchaser of two or more lots, held wholly or partly under the same title, shall not have a right to more than one abstract of the common title, except at his own expense.

(10.) This section applies only to sales made after 1881.

Sec. 4.—Where any person dies after 1881, leaving a contract enforceable against his heir (or devisee) for the sale of the fee simple or other freehold interest descendible to his heirs general, his personal representatives shall have power to convey the same.

Sec. 5.—Where land subject to any incumbrance is sold, the Court may, on application of any party to the sale, allow payment into Court of a sum sufficient to meet such incumbrance, and any costs and interest (not usually exceeding one-tenth of original amount paid in), and thereupon Court may declare land to be freed from such incumbrance. The Court has power afterwards, on notice to persons interested in the fund paid in, to direct transfer thereof.

Sec. 6.—In conveyances made after 1881, the ordinary "general words" formerly inserted after the parcels are deemed to be included.

Sec. 7.—(1.) In conveyances, settlements, assignments, mortgages, &c., made after 1881, if grantor is expressed to convey *as beneficial owner*, the ordinary covenants for title (as heretofore inserted) shall be implied. (2.) Where a conveyance is made by a person *by direction of the beneficial*

owner, such beneficial owner shall be deemed to convey as beneficial owner, and covenants on his part shall be implied accordingly. (3.) Where, in a settlement, the grantor conveys *as settlor*, a limited covenant for further assurance is implied. (4.) When any person conveys *as trustee*, or *as mortgagee*, or *as personal representative of a deceased person*, or *as committee of a lunatic*, or *under an order of Court*, a covenant is implied that such person has not incumbered. (5.) Where husband and wife convey *as beneficial owners*, the wife to be deemed to convey by direction of husband, and, in addition to the covenant implied on the part of the wife, there shall be implied (*a*) a covenant on the part of the husband as the person giving that direction, and (*b*) a covenant on the part of the husband in the same terms as the covenant implied on the part of the wife. (6.) These provisions do not extend to leases at a rent, or to any customary assurance except a deed conferring right to admittance.

Sec. 8.—In sales after 1881, purchaser is not entitled to require that vendor shall execute conveyance in his solicitor's presence, but, *at his own cost*, can nominate a person (who may, if he thinks fit, be his solicitor) to attest vendor's execution.

Sec. 9.—Where a person retains possession of documents and gives to another an *acknowledgment* in writing of the right of that other to production of those documents and to delivery of copies thereof, or an *undertaking* in writing for safe custody thereof, such acknowledgment and undertaking respectively, shall have, generally, the same effect as the ordinary covenants for the purpose heretofore entered into, and shall satisfy any liability to give any such covenants.

Part III.—Leases (secs. 10 *to* 14.)

Sec. 10.—In leases made after 1881, the rent and benefit of lessee's covenants and conditions of re-entry are to run

with reversion, notwithstanding severance of reversionary estate, and are recoverable and enforceable accordingly.

Sec. 11.—Like provision with regard to the obligations imposed by lessor's covenants.

Sec. 12.—Also on any severance of reversion, every condition, right of re-entry, &c., shall be apportioned.

Sec. 13.—On a contract, made after 1881, to grant a lease for a term of years to be derived out of a leasehold interest with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

Sec. 14.—(1 and 5.) Lessor cannot enforce a condition of re-entry or forfeiture in lease—other than a condition (1) against assigning or underletting, or (2) for forfeiture on bankruptcy or execution,* or (3) on breach of the covenant for inspection in a mining lease—until he has served on lessee a notice specifying breach, and (if capable of remedy) requiring him to remedy the same, and demanding compensation, and lessee fails within a reasonable time to comply therewith. (2) Where lessor is proceeding to enforce any such condition, the Court has power in lessor's action, or in any action brought by lessee, to grant lessee relief on such terms as it shall think fit. (7.) 22 & 23 Vict., c. 35, secs. 4 to 9, and 23 & 24 Vict., c. 126, sec. 2, are repealed. (8.) This section does not affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent. (9.) This section applies to all leases whenever made, *and shall have effect notwithstanding any stipulation to the contrary.*

Part IV.—Mortgages (*secs.* 15 *to* 25).

Sec. 15.—In all mortgages (whenever made, and even if expressly stipulated to the contrary) the mortgagee—not having been in possession—is bound (if required) on payment to assign the mortgage debt and transfer the mortgage

* But see sec. 2 of Conveyancing Act, 1892, *post*, page 32.

property to any third person instead of reconveying. (See section 12 of Conveyancing Act 1882, *post*, page 31.)

Sec. 16.—Mortgagor, whilst his right of redemption continues under a mortgage made after 1881, has the right (on payment of mortgagee's costs) to inspect and make copies, &c., of the title deeds.

Sec. 17.—The doctrine of Consolidation shall not apply to a mortgage made after 1881, unless the mortgage says otherwise.

Sec. 18.—A mortgagor *in possession*, and a mortgagee *in possession*, respectively, can make absolutely binding leases as follows:—

An agricultural or occupation lease not exceeding 21 years, and a building lease not exceeding 99 years; such lease to take effect within 12 months from date, to be at the best rent that can be obtained, without fine, to contain a covenant for payment of rent and condition of re-entry on non-payment for not exceeding 30 days, and a counterpart to be executed by lessee and delivered to lessor; of which execution and delivery, the execution of lease by lessor shall in favour of lessee be sufficient evidence. A building lease must be in consideration of houses or buildings erected or improved, &c., or to be erected or improved, &c., within 5 years from date; and a nominal or less rent than that ultimately payable, may be reserved for first 5 years or any part thereof. A mortgagor leasing under this section must, within one month after making the lease, deliver to the mortgagee (or where more than one, to mortgagee first in priority) the counterpart duly executed by lessee; but the lessee is not to be concerned to see that this provision is complied with. All this is subject to the express provisions of the mortgage deed; and applies only to mortgages made after 1881, unless otherwise agreed in writing.

Sec. 19.—Mortgagee under deed executed after 1881 has following powers:—*When principal money due*, power of sale,

and power to appoint a receiver; and, *at any time after date of deed*, power to insure against fire; and, *when in possession*, power to cut and sell ripe timber (not planted for shelter or ornament), such sale to be completed within 12 months from the contract. These powers may be varied or extended by the mortgage deed.

Sec. 20.—The above power of sale cannot be exercised (1) until default in payment of principal for *three* months after notice served on mortgagor, or one of several mortgagors, *or* (2) unless interest is in arrear for *two* months, *or* (3) there is a breach of some other provision in the mortgage deed or this Act, which the mortgagor ought to comply with.

Secs. 21 and 22.—Mortgagee selling under above power can convey whatever interest in the property is the subject of the mortgage* to the purchaser, whose title is not to be impeached, though the sale was not under the circumstances authorised. Money received from sale to be applied in discharging prior incumbrances, then costs of sale, then the mortgage debt with interest and costs, and then any balance to mortgagor. Mortgagee not to be liable for any involuntary loss on sale. The sale may be by any person for the time being entitled to receive and give a discharge for the mortgage money. Mortgagee's receipt to be sufficient discharge to purchaser.

Sec. 23.—Insurance against fire by mortgagee under sec. 19 shall not exceed amount specified in mortgage deed; or (if no amount specified) two-thirds of the amount required in case of total destruction to restore the property insured. The said power to insure is not to apply where there is a declaration in the mortgage that no insurance is required, *or* where mortgagor keeps up insurance in accordance with the mortgage deed, *or* where the mortgage deed contains no covenant as to insurance but mortgagor insures to the

* He cannot convey the legal estate if he has not got it. *Re* Hodson and Howe's Contract, 56 L. J., Ch., 755.

amount which the mortgagee is authorised to insure for. All money received under insurance shall, at the option of mortgagee (and without prejudice to any obligation imposed by law or special contract), be applied in rebuilding, or towards discharge of mortgage debt.

Sec. 24.—(1 to 5.) The power to appoint a receiver conferred by sec. 19 shall not be exercised until mortgagee has become entitled to exercise power of sale under sec. 20. Then he may be appointed by writing under mortgagee's hand, and, in like manner, he may be removed and a new receiver appointed. When appointed, receiver to have all full and necessary powers; and to be deemed the agent of the *mortgagor*, who is to be solely responsible for his acts and defaults, unless the mortgage deed otherwise provides. Any person to be safe in paying to receiver. (6.) Receiver may retain out of moneys received—by way of remuneration and in satisfaction of all costs, charges, and expenses incurred by him as receiver—a commission at such rate (not exceeding 5 per cent. on the gross amount received) as is specified in his appointment, and, if no rate specified, then at the rate of 5 per cent. on that gross amount, or at such higher rate as the Court, on the receiver's application, thinks fit to allow. (8.) Receiver to apply moneys thus:—(*a*) In discharging rents, rates, outgoings, &c.; (*b*) In keeping down all annual or other payments, and the interest on any principal sums, having priority; (*c*) In payment of his commission, and any premiums on proper policies of insurance, and any necessary or proper repairs directed in writing by the mortgagee; (*d*) In payment of interest accruing due under the mortgage; and (*e*) The residue he shall pay to the person who, but for his possession, would have been entitled to the income of the mortgaged property.

Sec. 25.—Any person entitled to redeem can insist on a judgment for sale, instead of redemption, if he brings an

action for redemption, or for sale, or for sale or redemption in alternative. In any action for foreclosure, sale, or redemption, the Court may, on request of any person interested, direct a sale on such terms as it thinks fit, including (if it thinks fit) the deposit in Court of a reasonable sum to meet expenses of sale and to secure performance of the terms. In an action brought by a person interested in the right of redemption and seeking a sale, the Court may direct the plaintiff to give security for costs, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants. The Court may direct a sale without previously determining the priorities of any incumbrances. 15 & 16 Vict., c. 86, sec. 48, is repealed.

Part V.—Statutory Mortgage (*secs.* 26 *to* 29).

Sec. 26.—A mortgage of *freeholds or leaseholds* may be by deed expressed to be "made by way of statutory mortgage" in the form given in Part I. of Schedule 3 to Act, with such variations as necessary. In such a deed there shall be implied—(*a*) covenants for repayment of principal, and for payment of interest half-yearly, and (*b*) proviso for redemption on payment.

Sec. 27.—(1 and 2.) A transfer of such a statutory mortgage may be by deed, by way of statutory transfer, in such one of the three forms, A, B, and C, given in Part II. of Schedule 3 to Act, as may be appropriate, with such variations as necessary; and such a transfer shall vest in the transferee all powers and rights as if he had been original mortgagee. (3) If the transfer is in the form B—*i.e.*, mortgagor joining in transfer—a covenant shall be implied by him to pay the principal money on the next day fixed for payment of interest, and if not then paid to continue to pay interest.

Sec. 28.—On a statutory mortgage or statutory transfer—

if there are several mortgagors or covenantors, any implied covenants are to be deemed joint and several: and, if there are several mortgagees or transferees, any implied covenants to be deemed with them jointly, unless mortgage money expressed to be secured in shares or distinct sums, when covenants to be deemed with each severally as regards the sum secured to him.

Sec. 29.—A reconveyance of a statutory mortgage may be by statutory reconveyance, in form given in Part III. of Schedule 3 to Act, with variations as necessary.

Part VI.—Trust and Mortgage Estates on Death.

Sec. 30.—If a sole trustee or mortgagee dies after 1881, the trust or mortgage estate* shall, notwithstanding any testamentary disposition, vest in his personal representatives, who shall have all proper powers, and shall be deemed, for the purposes of this section, the heirs and assigns of the deceased within the meaning of all trusts and powers.

Part VII.—Trustees and Executors.

This part, consisting of Sections 31 to 38, is repealed by the Trustee Act 1893.

Part VIII.—Married Women.

Sec. 39.—Notwithstanding a married woman is restrained from anticipation, the Court may, if it think fit, where it appears to be for her benefit, by judgment or order, with her consent, bind her property.

Sec. 40.—A married woman, whether an infant or not, shall have power to appoint an attorney to execute any deed or do any act which she herself might execute or do.

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* By section 45 of the Coyyhold Act 1887, it was enacted that this provision should not apply to trust or mortgage estates in copyholds of inheritance, and, though this enactment is itself repealed by the Copyhold Act 1894, this provision is continued (sec. 88.)

Part IX.—Infants.

Sec. 41.—Where an infant is entitled to a fee simple, or to any leasehold interest at a rent, the land is to be deemed a settled estate within the Settled Estates Act 1877.*

Sec. 42.—When, under an instrument coming into operation after 1881, an infant is beneficially entitled to possession of any land (and, if a woman, unmarried), the trustees under the settlement, or trustees appointed by the Court on the application of a guardian or next friend of infant, may take possession of the land, and shall then have full powers to cut timber in usual course for sale or repairs, to pull down and rebuild houses, &c., and generally to manage the property in the same way that infant might, if of full age, and may apply the income in keeping down expenses of management and (at their discretion) for maintenance of infant, and shall invest and accumulate the residue in trust for infant on attaining 21, or, if a woman, married whilst an infant, for her separate use, or if the infant dies, in trust for the parties then entitled. These provisions only apply so far as no contrary intention is expressed in the instrument under which the infant gets the property.

Sec. 43.—Trustees who hold any property in trust for an infant under any instrument operating either before or after 1881 may (unless instrument says otherwise) at their absolute discretion apply the income (if it will be the property of the infant in case he lives to be 21) for the maintenance, education, or benefit of such infant, and may for this purpose resort to accumulations of past years. Any surplus income is to be accumulated for the person who ultimately becomes entitled to the property.

Part X.—Rent Charges, &c.

Sec. 44.—A person entitled to a rent charge, or other

* See also sections 59 and 60 of Settled Land Act 1882, *post*, p. 43.

similar annual payment, *under an instrument coming into operation after* 1881, has the following powers to enforce payment:—(*a*) If in arrear for 21 days, power of distress; (*b*) If in arrear for 40 days, power to enter into possession and take income till satisfaction; (*c*) If in arrear for 40 days —instead of or in addition to (*b*)—power to demise the land to a trustee for a term of years on trust, by mortgage or sale or demise of the term, to raise the money to satisfy him. These powers are subject to any contrary provisions in the instrument creating the charge.

Sec. 45.—Any quit rent, chief rent, rent charge, or other annual sum issuing out of lands,—which is perpetual and is *not* tithe rent charge, or rent reserved on a sale or lease, or rent payable under a grant or licence for building purposes —can be redeemed by the landowner. He must obtain a certificate from the Land Department of the Board of Agriculture of the amount to be paid for redemption; and then, after one month's notice to the person entitled to the rent, pay or tender the amount certified; and the Department then give a conclusive certificate that rent is redeemed.

Part XI.—Powers of Attorney.

Sec. 46.—A person executing a deed under a power of attorney may execute it either in his own name, or in the name of the donor of the power.

Sec. 47.—Attorney not to be liable for any payment made, or other act done by him, *bonâ fide*, under his power without notice of donor's death, lunacy, bankruptcy, or revocation. But this does not affect any right against the person to whom money has been paid.

Sec. 48.—Powers of attorney, on their execution being verified, may be deposited in the Central Office of Supreme Court of Judicature; and an office copy thereof is sufficient evidence of the contents of the instrument and its deposit there. (Rules of Court may be made for carrying out this section.)

Part XII.—Construction and Effect of Deeds, &c.

Sec. 49.—In conveyances, either before or after 1881, the word "Grant" is not necessary to convey any tenements or hereditaments.

Sec. 50.—After 1881, freehold land, or a chose in action, may be conveyed by one person direct to himself and another; or by a husband to wife, or wife to husband, either alone or jointly with others.

Sec. 51.—In deeds made after 1881—to pass a fee simple, the words "in fee simple" to be sufficient without word "heirs;" and to create an estate tail, the words "in tail" to be sufficient without the words "heirs of the body;" and to create an estate in tail male or female, the words "in tail male," or "in tail female," to be sufficient.

Sec. 52.—Any person entitled to a power, whether coupled with an interest or not, may, by deed, release or contract not to exercise it. (See also sec. 6 of 1882 Act, *post*, page 29.)

Sec. 53.—A deed expressed to be supplemental to another shall be read and have effect as if endorsed thereon, or as if it contained a full recital thereof.

Secs. 54, 55.—In deeds executed after 1881—a receipt for consideration in the body of deed is sufficient without a receipt endorsed; and any receipt (whether in body or endorsed) shall be sufficient evidence of payment to satisfy any subsequent purchaser not having actual notice of non-payment.

Sec. 56.—A solicitor in completing a purchase, &c., need not produce an authority from his client to receive the money, but his production of the deed duly executed, with receipt thereon, shall be sufficient authority for payment to him.*

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* This is extended to cases where the venders are trustees, by sec. 2 of the Trustee Act 1888, as from 1st January, 1889; and this provision is now to be found in sec. 17 of the (consolidating) Trustee Act 1893.

Sec. 57.—Deeds in the form in Schedule 4, or in like form, or using like expressions, shall be sufficient.

Sec. 58.—Covenants made after 1881—(*a*) relating to lands of inheritance, shall be deemed to be made *with* the covenantee, his heirs and assigns, and (*b*) relating to other lands, shall be deemed to be made *with* the covenantee, his executors, administrators, and assigns.

Sec. 59.—A covenant and a contract under seal made after 1881 (including a covenant implied under Act) shall, unless otherwise stated, bind the heirs and real estate (without naming them) as well as the personal representatives and personal estate of the covenantor.

Sec. 60.—A covenant made after 1881 with two or more jointly shall (unless otherwise stated) enure for the benefit of the survivor or survivors, and any other person on whom the right to sue devolves.

Sec. 61.—In a mortgage, transfer of mortgage, &c., made after 1881 (subject to any contrary intention expressed in the instrument), when money is expressed to be advanced on a joint account, or when the instrument is made to more persons than one jointly and not in shares, the money shall be deemed to belong to the mortgagees or transferees, &c., on a joint account as between then *and* the mortgagor or obligor; and the receipt of the survivors or survivor or personal representative of the last survivor shall be a complete discharge, notwithstanding any notice to the payer of a severance of the joint account.

Sec. 62.—Where, after 1881, freeholds are conveyed to the use that any person shall have an easement thereout, it shall operate to vest such easement in that person.

Sec. 63.—In conveyances made after 1881, and subject to any contrary intention, "all the estate" clause is deemed to be included.

Sec. 64.—In construing any covenant or proviso implied under this Act, words importing singular or plural number,

or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as case may require.

Part XIII.—Long Term.

Sec. 65.—Where a residue unexpired of not less than 200 years of a term, which, as originally created, was for not less than 300 years, is subsisting in land without any trust or right of redemption, and without there being (either originally, or by release, or other means) any rent, or with merely a peppercorn rent or other rent having no money value, incident to the reversion, then the term may be enlarged into a fee simple (to be subject, however, to the same trusts, powers, &c., as the term) by the execution of a deed containing a declaration to that effect by (*a*) Any person beneficially entitled in right of the term, whether subject to any incumbrance or not, to possession of any land comprised in the term, but, in case of a married woman, with the concurrence of her husband, unless she is entitled for her separate use (whether with restraint on anticipation or not) and then without his concurrence; (*b*) Any person being in receipt of income as trustee in right of the term, or having the term vested in him in trust for sale, whether subject to any incumbrance or not; or (*c*) Any person in whom, as personal representative of a deceased person, the term is vested, whether subject to any incumbrance or not. (See sec. 11 of 1882 Act, *post*, page 31.)

Part XIV.—Adoption of Act.

Sec. 66.—All persons, whether solicitors, trustees, or the parties concerned themselves, adopting the provisions of the Act, to be protected in doing so.

Part XV.—Miscellaneous.

Sec. 67.—All notices required by this Act must be in

writing, and may be served by being left at a person's last known place of abode or business; or, if to be served on a lessee or mortgagee, by being left for him on the land or at any house or building comprised in the lease or mortgage, or in case of a mining lease by being left at office or counting-house of the mine; or by sending through the post a registered letter, directed to the party by name at aforesaid place of abode, business, or counting-house, provided letter is not returned through the post undelivered.

Sec. 68.—5 & 6 Wm. IV., c. 62, may be cited by the short title of The Statutory Declarations Act 1835 in any declaration made under or by virtue of that Act, or in any other document, or in any Act of Parliament.

Part XVI.—Court, Procedure, Orders.

Sec. 69.—(1.) All matters within the jurisdiction of the Court under this Act shall be assigned to the Chancery Division. (3.) Every application under the Act, except where otherwise expressed, shall be by summons at chambers. (8.) Rules for purposes of Act to be deemed Rules of Court under sec. 17 of Appellate Jurisdiction Act 1876 (39 & 40 Vict., c. 59, sec. 17.)

Sec. 70.—(1.) An Order of the Court under any statutory or other jurisdiction shall not, as against a purchaser, be invalidated on the ground of want of jurisdiction, or want of any consent, notice, or service.

Part XVII.—Repeals.

Sec. 71.—8 & 9 Vict., c. 119, and 23 & 24 Vict., c. 145, secs. 11 to 30, are repealed; but this is not to affect the validity or invalidity, or any operation, effect, or consequence of any instrument executed or made, or of anything done or suffered, before the commencement of this Act, or any action, proceeding, or thing then pending or uncompleted; and every such action, proceeding, and thing may be carried on

and completed as if there had been no such repeal in this Act.

Part XVIII.—Relates to Ireland.

(The Schedules containing forms are omitted.)

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45 & 46 VICT., C. 39.

The Conveyancing Act 1882.

(*Commencement of Act, 1st January*, 1883.)

Sec. 1.—*Purchaser* includes a lessee or mortgagee, or an intending mortgagee, or other person, who for valuable consideration takes or deals for property; and *purchase* has a meaning corresponding with that of purchaser.

Searches.

Sec. 2.—Searches for judgments, deeds, or other documents, whereof entries are allowed or required to be made in the Central Office, may be made by an official; and his certificate of result of search shall be conclusive in favour of a purchaser; and a solicitor obtaining an office copy of any such certificate shall not be answerable in respect of any loss that may arise from error in the certificate.

Notice.

Sec. 3.—(1.) A purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing, unless—

(i.) It is within his own knowledge; or would have come to his knowledge, if such inquiries and inspections had been made, as ought reasonably to have been made by him; or

(ii.) In the same transaction with respect to which a question of notice to the purchaser arises—it has come to the knowledge of his counsel, as such; or of his solicitor, or other agent, as such; or would have come to the knowledge of his solicitor, or other agent, as

such, if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

This section applies to purchases before or after this Act.

Separate Trustees.

Sec. 5.—(Repealed by Trustee Act 1893.)

Powers.

Sec. 6.—(1.) A person to whom any power (whether coupled with an interest or not) is given, may, by deed, disclaim the power; and, after disclaimer, shall not be capable of exercising or joining in the exercise of the power; and, on such disclaimer, the power may be exercised by the other or others, or the survivors or survivor of the others, of the persons to whom the power is given, unless the contrary is expressed in the instrument creating the power. This section applies to powers created by instruments coming into operation either before or after this Act.

Married Women.

Sec. 7.—(1.) In section 79 of the Fines and Recoveries Act, there shall be substituted for the words, "two of the perpetual commissioners, or two special commissioners," the words, "one of the perpetual commissioners," or "one special commissioner;" and in sec. 83 of the Fines and Recoveries Act there shall be substituted for the word "persons" the word "person," and for the word "commissioners" the words "a commissioner;" and all other provisions of those Acts, and all other enactments having reference in any manner to the sections aforesaid, shall be read and have effect accordingly.

(2.) Where the memorandum of acknowledgment by a married woman of a deed purports to be signed by a person authorised to take the acknowledgment, the deed shall, as

regards execution by the married woman, take effect at the time of acknowledgment, and shall be conclusively taken to have been duly acknowledged.

(3.) A deed acknowledged before or after this Act by a married woman, before a judge of the High Court of Justice in England, or before a judge of a County Court in England, or before a perpetual commissioner or a special commissioner, shall not be impeached or impeachable by reason only that such judge or commissioner was interested or concerned either as a party, or as solicitor, or clerk to the solicitor, for one of the parties, or otherwise, in the transaction giving occasion for the acknowledgment.

(4.) 3 & 4 William IV., c. 74, sec. 84, from "and the same judge" to the end of the section and sections 85 to 88 inclusive, and 17 & 18 Vict., c. 75, are repealed.

(5.) This section applies only to the execution of deeds by married women after 1882.

Powers of Attorney.

Secs. 8, 9.—(*a*) If a power of attorney, given for valuable consideration, is in the instrument creating the power expressed to be irrevocable, or (*b*) if a power of attorney (whether given for valuable consideration or not) is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument—then, in favour of a purchaser, the power shall not be revoked at any time, or during the fixed period as the case may be, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and any act done at any time, or during the fixed time as the case may be, by the donee of the power, in pursuance of the power shall be as valid as if anything done by the donor of the power without the concurrence of the

donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened; and neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power. This section applies only to powers of attorney created by instruments executed after 1882.

Executory Limitations.

Sec. 10.—Where there is a person entitled—under an instrument coming into operation after 1882—to land for an estate in fee, or for a term of years absolute or determinable on life, or for term of life, with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period or time or not, that executory limitation shall become void and incapable of taking effect, as soon as there is living any issue who has attained the age of twenty-one years, of the class on default or failure whereof the limitation over was to take effect.

Long Terms.

Sec. 11.—Section 65 of the Conveyancing Act 1881 shall apply to and include every term in that section mentioned, whether having as the immediate reversion thereon the freehold or not; but not—

(i.) Any term liable to be determined by re-entry for condition broken; or

(ii.) Any term created by sub-demise out of a superior term, itself incapable of being enlarged into a fee simple.

Mortgages.

Sec. 12.—The right of the mortgagor, under section 15 of the Conveyancing Act 1881, to require a mortgagee,

instead of re-conveying, to assign the mortgage debt and convey the mortgaged property to a third person, can be enforced by each incumbrancer, or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancer shall prevail over a requisition of the mortgagor; and, as between incumbrancers, a requisition of a prior incumbrancer shall prevail over that of a subsequent incumbrancer.

Saving.

Sec. 13.—The repeal by this Act of any enactment shall not affect anything that has taken place before 1883.

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55 & 56 VICT., C. 13.

Conveyancing and Law of Property Act 1892.

(*Commencement of Act, 20th June*, 1892.)

An Act of six sections to amend the Conveyancing Act 1881. Sec. 1 contains the short title.

Sec. 2.—*Leases, underleases, forfeiture.*—(1.) A lessor can recover as a debt due from the lessee (in addition to any damages) his reasonable costs properly incurred to a solicitor and surveyor, or valuer, or otherwise, in reference to any breach giving a right of re-entry or forfeiture which at the lessee's request is waived by the lessor, or from which the lessee is relieved under the Conveyancing Act 1881 or this Act.

(2.) The provision in section 14 of the Conveyancing Act 1881, that there is to be no relief against a condition for forfeiture of a lease on bankruptcy of the lessee or on taking in execution of the lessee's interest, shall apply only after the end of a year from the bankruptcy or execution and provided the lessee's interest be not sold within such year [*i.e.*, you can get relief (1) always, within the year, or (2) after the year, if the interest is sold during the year]; but this provision does not apply to a lease of a farm, or minerals, or a

public-house or beershop, or a furnished dwelling-house, or any property as to which the personal qualifications of the tenant are important to preserve the value or character of the property, or because of the neighbourhood of the lessor or his tenants.

Sec. 3.—*No fine to be exacted for license to assign.*—A condition in a lease against assigning or under-letting without license shall (*unless the lease expressly says otherwise*) be deemed to include a proviso that no fine shall be payable for such license, but that reasonable legal or other expenses in relation to such license shall be paid.

Sec. 4.—*Court may protect underlessee on forfeiture of superior lease.*—Where a lessor *is proceeding* by action or otherwise to enforce a right of re-entry or forfeiture under the lease the Court *may*, on application by any underlessee either in the lessor's action or a separate action, make an order vesting in such underlessee all or any part of the property leased for the residue of the lease or a shorter term on such terms as the Court thinks fit. The underlessee cannot require a lease for a term longer than his underlease [but apparently he may ask for it and the Court may give it].

Sec. 5.—*Definitions.*—In this Act and in section 14 of the Conveyancing Act 1881, *lease* shall include an agreement for a lease where the lessee has become entitled to have his lease granted, and *underlease* shall similarly include an agreement therefor. In this Act [*i.e.*, in section 4] *underlessee* includes any one deriving title under or from an underlessee.

Sec. 6.—(Repealed by Trustee Act 1893).

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45 & 46 VICT., C. 38.

The Settled Land Act 1882.

(*Commencement of Act, 1st January*, 1883.)

Sec. 2.—*Settlement* in this Act means any deed, will,

agreement, Act of Parliament, instrument, or number of instruments, whether made or passed before or after this Act, whereby land stands limited to persons by way of succession. *Settled land* is land, and any estate or interest therein, which is the subject of a settlement. *Tenant for life* is the person for the time being beneficially entitled to possession of settled land for life; and, if more than one, they together. *Trustees of settlement* are the persons who under the settlement are trustees with power of sale or of consenting to sale, *or* (if none) persons declared trustees by the settlement, *or* (if none) persons named in sec. 16 of 1890 Act, *post*, p. 49, *or* (if none) persons appointed by Court.

Secs. 3, 4.—A tenant for life is to have a general power to sell, enfranchise, exchange, or make partition of, the settled estate at the best price or consideration that can reasonably be obtained. The sale may be by public auction or private contract, together or in lots, with power to fix reserved biddings, and buy in at auction. Settled land in England must not be exchanged for land out of England.

Sec. 5.—On a sale, exchange, or partition, the tenant for life may, *with consent of the incumbrancer*, transfer an incumbrance from the land sold, exchanged, or partitioned on to any other part of the settled land, whether already charged therewith or not.

Secs. 6, 7.—A tenant for life can make a building lease not exceeding 99 years,* a mining lease not exceeding 60 years, and any other lease not exceeding 21 years. Such leases to be by deed, to take effect within 12 months from date, at the best rent that can reasonably be obtained with power to take a fine (which by the 1884 Act is capital money), to contain a covenant for payment of rent, and condition of re-entry on non-payment within a time not exceeding 30 days, and a

* Note that by the Settled Land Act 1889 (52 & 53 Vict., c. 36) such a lease may contain an option to the lessee to purchase the fee simple within a term not exceeding 10 years at a price named in the lease.

counterpart to be executed by lessee; but the execution of the lease by the tenant for life to be sufficient evidence of this last point.

Secs. 8-11.—Every building lease to be partly in consideration of the erection or improvement or putting into repair of buildings; a nominal rent may be reserved for first five years. On contracts for building leases in lots, the entire rent may be apportioned among the lots; but the rent on each lease must not be less than 10s., and must not exceed one-fifth of annual value of land in such lease after erecting the buildings. In a mining lease, the rent may be made ascertainable, or to vary, according to acreage worked or minerals obtained. In both mining and building leases, on application to the Court, and showing that it is customary to do so, or that it is difficult to make leases otherwise, the Court may authorise the granting of leases for longer terms, or even in perpetuity, on conditions expressed in the order. Under a mining lease, there shall always be set aside, as capital money, part of the rent, viz., when the tenant for life is impeachable for waste, three-fourths, and otherwise, one-fourth thereof.

Sec. 12.—The tenant for life may grant a lease to carry out a binding contract made by his predecessor, or under a binding covenant for renewal, or to confirm a void or voidable lease.

Sec. 13.—The tenant for life may accept a surrender of any lease either as to all or part only of the property.

Sec. 14.—Tenant for life of a settled manor may grant licenses to copyhold tenants to make any such leases as he might make of freeholds; such license may fix the annual value whereon fines and other customary payments are to be assessed, and must be entered on the court rolls of the manor.

Sec. 15.—Replaced by sec. 10 of 1890 Act, *post*, p. 47.

Sec. 16.—On a sale or grant or lease for building pur-

poses the tenant for life, for the general benefit of the residents on the settled land (or any part thereof), may appropriate portions thereof for streets, roads, paths, squares, gardens, or other open places, and may execute any deed necessary for vesting them in any trustees or any company or public body. Such deed must be enrolled in the central office.

Sec. 17.—A sale, exchange, partition, or mining lease may be of land without minerals, or *vice versâ*; or of all or any of the minerals, &c.

Sec. 18.—*Mortgage.*—The tenant for life may mortgage to raise money required for enfranchisement, or for equality of exchange or partition, and the sum raised shall be capital money. [Also to pay costs under secs. 36 & 47; also under sec. 11 of 1890 Act.]

Sec. 20.—On a sale, exchange, partition, lease, mortgage, or charge, the tenant for life may convey the land (including *copyholds*, and leaseholds vested in trustees, and easements) by deed. Such deed passes the land, subject to (1) interests having priority over the settlement, (2) interests created under the settlement for securing money already raised, and (3) rights previously granted for value under the settlement. As to copyholds, the deed is sufficient without surrender, and admittance must be made thereunder; but the steward may require production of so much of the settlement as shows the title of the tenant for life and enter that on the court rolls.

Secs. 21-23.—Capital money arising under this Act (in addition to any particular purpose for which it is raised) may be applied as follows:—In investment on Government or other securities in which trustees may invest either by law or under the settlement, or in debenture stock of any railway company in Great Britain or Ireland, provided it has for the ten preceding years paid a dividend on its ordinary stock; in discharge of incumbrances, land-tax, &c.,

on the settled land; in payment for any improvement* authorised by this Act (see sec. 25), or for equality of exchange or partition; in purchase of the seignory, reversion, or freehold in fee of any part of the settled land; in purchase of lands or mines or minerals in fee or of customary or copyhold tenure, or of leaseholds having not less than 60 years to run (but capital money arising from land in England not to be applied in purchase of land out of England, unless specially allowed by the settlement—sec. 23); in payment to any person becoming absolutely entitled; in payment of any costs or expenses in connection with any of the powers under this Act; and in any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder.

Sec. 22.—For the purpose of being invested or applied as specified in last section, capital money is to be paid to the trustees of the settlement, or into Court, at option of tenant for life; and investment or application to be according to direction of tenant for life, or in default, at trustees' discretion subject to any direction in the settlement. Capital money is to be deemed and treated as land; and the income of any capital money is to go as the income of the land would have gone under the settlement.

Sec. 25.—This section enumerates the improvements authorised by the Act for application of capital money. No less than twenty different kinds are given of which may be mentioned the following:—Draining, warping, irrigation, inclosing, reclaiming, building farmhouses, farm cottages or saw mills, or construction of reservoirs, tramways, railways,

* By the Settled Land Act 1887 (50 & 51 Vict., c. 30), when any improvement authorised by the 1882 Act has been made—before or after 23rd August, 1887—and a rent-charge (temporary or perpetual) created under any statute to pay for it, capital money may be used to redeem or pay such rent-charge, and shall then be deemed to be applied for an improvement authorised by the 1882 Act, and sec. 28 of 1882 Act shall apply accordingly.

canals, docks, jetties, piers, market places, streets, roads, trial pits for mines, &c.

Sec. 26.—A tenant for life desirous of applying capital money in improvements is to submit a scheme for approval to the trustees of the settlement, or the Court, showing proposed expenditure. Where the capital money is in trustees' hands, they may pay it for such improvements on production of (*a*) a certificate of the land commissioners (see sec. 48) that the works are properly executed and what amount is properly payable thereunder, or (*b*) a like certificate of a competent engineer or practical surveyor, nominated by the trustees and approved by the commissioners, or (*c*) an order of the Court. Where the capital money is in Court the scheme has first to be approved by the Court, and then money to be paid on an order of the Court, which will be granted on either of such certificates as already mentioned, or on such other evidence as the Court thinks fit.

Sec. 28.—Tenant for life must maintain, repair, and insure against fire any such improvements at his own cost; and must not cut timber planted as an improvement, except for proper thinning.

Sec. 29.—In executing, maintaining, or repairing any improvement authorised by this Act, the tenant for life, or any other person, not to be liable for waste, and may cut down and use timber and other trees not planted or left standing for shelter or ornament.

Secs. 30, 32, 33.—The improvements allowed by this Act are to be also allowed and to be deemed included in the Improvement of Land Act 1864 (27 & 28 Vict., c. 114, sec. 9); and in the Land Clauses Consolidation Acts 1845 (8 & 9 Vict., c. 18), 1860 (23 & 24 Vict., c. 106), and 1869 (32 & 33 Vict., c. 18); and in the Settled Estates Act 1877 (40 & 41 Vict., c. 18); and in all settlements in which money is in the hands of trustees to be laid out in the purchase of lands.

Sec. 31.—In the same way that the tenant for life may

make leases and sales, so also he may contract therefor, and may revoke such contracts and enter into fresh ones, as if he were absolute owner, and every contract shall be enforceable in favour of, or against, successors.

Sec. 34.—Trustees, or the Court, may require and cause the purchase-money paid in respect of a lease, or of any estate less than a fee simple, or in respect of a reversion dependent on any such lease, to be laid out, invested, and accumulated in such manner as, in the judgment of the trustees or the Court, will give to the persons interested in that money the like benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect whereof the money was paid, or as near thereto as may be.

Sec. 35.—A tenant for life, though impeachable for waste, may, with the consent of the trustees of the settlement or an order of the Court, cut and sell timber ripe and fit for cutting; but three-fourths of the net proceeds to be set aside as capital moneys, and the residue only to go as rents or profits.

Sec. 36.—The Court may, if it thinks fit, approve of any action, defence, petition to Parliament, parliamentary opposition or other proceeding taken or proposed to be taken for protection of settled land, or of any action or proceedings for recovery of such land; and direct the costs in connection therewith to be paid out of the settled estate. (Note—This section is instead of sec. 17 of 40 & 41 Vict., c. 18, which is repealed. See *post*, sec. 64.)

Sec. 37.—Heirlooms—*i.e.*, personal chattels settled on trust to devolve with the land—may, by an order of the Court, be sold by tenant for life; but the proceeds are capital moneys, and must be dealt with as before authorised, or be invested in purchase of other heirlooms.

Secs. 38, 39.—In default of trustees under a settlement the Court may, on application of tenant for life, appoint such trustees; and they, or the survivors, or the personal repre-

sentatives of the survivor, shall be deemed the trustees of the settlement; but no capital money shall be paid to less than two trustees, unless the settlement specially authorises it being paid to one only.

Secs. 40-43.—Trustees' receipts to be full and sufficient discharges. Each trustee to be liable for his own acts only and not where he has only joined for conformity. No trustee to be liable for giving consents, or for omitting to take action upon notices received, or for dealings with land. Trustees may reimburse themselves expenses.

Sec. 44.—In case of difference arising between tenant for life and trustees of settlement, respecting any powers or any matters under this Act, either party can apply to the Court for directions respecting the matter in difference and the costs.

Sec. 45.—Tenant for life intending to exercise any of the powers conferred by this Act shall send by registered post, not less than one month before he acts, a notice thereof to each trustee at his usual place of abode, and, if he knows the trustees' solicitor, to such solicitor also at his usual place of business. There must not, at the time of this notice, be less than two trustees, unless allowed by the settlement. A person dealing in good faith with the tenant for life is not concerned to enquire as to whether such notice has been given. (See amendments of this section by sec. 5 of the Settled Land Act 1884, *post*, page 44, and sec. 7 of the 1890 Act, *post*, page 47.)

Sec. 46.—The section contains regulations respecting payments into Court, applications, &c., of which the following are the chief:—Matters under the Act are assigned to the Chancery Division; payment into Court to be an effectual exoneration; applications to be made to the Court by petition,* or by summons in chambers; on an application

* The Settled Land Act Rules say that all applications may be made by summons in chambers, and, if a petition is presented without direction of a judge, only the costs of a summons shall be allowed. (Rule 2.)

by trustees of settlement notice to be served in first instance on tenant for life, and then on such persons as the Court shall think fit; general rules under the Act may be made, and to be deemed rules of Court. The County Court of the district where the settled estate is situate, or from where the capital money arises, or in connection with which personal chattels are settled, is to have jurisdiction under this Act, where capital money, or securities in which it is invested, or the value of the settled estate, does not exceed £500, and the annual rateable value of the settled estate does not exceed £30 per annum.

Sec. 47.—Any costs, charges, or expenses may be directed by the Court to be paid out of income, or out of capital money, or raised by means of sale or mortgage out of the settled estate. 9. 158.

Secs. 48, 49.—The Inclosure Commissioners for England and Wales, the Copyhold Commissioners, and the Tithe Commissioners for England and Wales, shall, by virtue of this Act, become and be styled the *Land Commissioners for England*.* Every certificate and report appoved and made by the Land Commissioners under this Act shall be filed in their office, and office copies shall be delivered out on application, and shall be sufficient evidence thereof.

Secs. 50-52.—The powers under this Act of a tenant for life are not capable of assignment or release, by express act or by operation of law; but remain exerciseable by tenant for life, notwithstanding assignment of his estate—except that, if tenant for life has assigned his estate for value, this section shall not operate to assignee's prejudice, and his rights shall not be affected without his consent, but, if the assignee is not in possession, tenant for life still to have the power of making leases without taking a fine. Any contract by a tenant for life not to exercise his powers under 1. 152. 1. 154.

* Now the Land Department of the Board of Agriculture, 52 & 53 Vict., c. 30.

this Act is void, and any prohibition in the settlement or provision for forfeiture on exercise of such powers also void.

Sec. 53.—Tenant for life, in exercising powers under this Act, to have the duties and liabilities of a trustee for all parties entitled under the settlement.

Sec. 54.—On sale, exchange, partition, lease, mortgage, or charge, under this Act, persons dealing *bonâ fide* to be conclusively taken, as against all parties interested under settlement, to have given the best price, consideration or rent, and to have complied with all requisitions of this Act.

Sec. 56.—All other powers subsisting under any settlement or statute or otherwise, exercisable by tenant for life, or his trustees, to be still existing, and the powers conferred by this Act to be cumulative, but, in case of any conflict, provisions of this Act to prevail; and accordingly, the consent of tenant for life shall, by virtue of this Act, be necessary to the exercise by trustees, or other persons, of any power conferred by the settlement exercisable for any purpose provided for in this Act. Should any doubts arise on matters within this section the Court may, on application of the trustees, or the tenant for life, or other person interested give its decision, opinion, advice, or direction thereon. (See Settled Land Act 1884, sec. 6, *post*, page 44.)

Sec. 57.—A settlement may confer powers larger than, or additional to, those contained in Act.

Sec. 58.—Each person, as follows, shall, when his estate or interest is in possession, have the powers of, and be deemed (for the purpose of the Act) to be a tenant for life, viz.:—(1.) Any tenant in tail—except a tenant in tail of land purchased by money provided by Parliament in consideration of public services, who is restrained by Act of Parliament from barring his entail, the reversion being in the Crown. (2.) A tenant in fee simple with an executory limitation over. (3.) The owner of a base fee. (4, 5 and 6.) A tenant for years terminable on life, or a tenant *pur autre vie* not holding

merely under a lease at rent. (7.) A tenant in tail after possibility of issue extinct. (8.) A tenant by curtesy. (9.) A person entitled to income of land under a trust or direction to pay it to him for a life, whether subject to costs of management or not, or until sale of land, or until forfeiture of his interest on bankruptcy or any other event.

Secs. 59, 60.—When an infant is in his own right entitled to land, for the purposes of this Act, the land is to be deemed settled land, and the infant a tenant for life. When an infant is tenant for life the powers may be exercised by the trustees of the settlement, and (if none) by such person and in such manner as the Court, on application of the guardian or next friend of the infant, either generally or in a particular instance, orders.

Sec. 61.—When a married woman is tenant for life and is entitled for her separate use, then she, without her husband, to have the powers of a tenant for life. If entitled not for her separate use, then she and her husband together to have the powers. A restraint on anticipation is not to prevent married woman's exercise of the powers of this Act.

Sec. 62.—When tenant for life is a lunatic, so found by inquisition, his committee, under order of Chancellor or other person entrusted by Queen's Sign Manual with the care of the persons and estates of lunatics, may exercise the powers of this Act.

Sec. 63.—Land subject to a trust or direction for sale, and the application and disposal of the sale money, or the income thereof, or the income until sale, or any part of such money or income, for the benefit of one or more for life shall be deemed settled land; and the person beneficially entitled for the time being to the income of the land until sale shall be deemed tenant for life; and the persons who are under the settlement trustees for sale of the settled land, or have power to consent to the sale, or if no such trustees, then the persons (if any) who are by the settlement declared to

be trustees thereof for purposes of this Act, are, for the purpose of this Act, trustees of the settlement. (See amendment to this section by the Settled Land Act 1884, secs. 6, 7, *post*, pages 44, 45.)

Sec. 64 repeals 23 & 24 Vict., c. 145, Parts I. and IV., being the residue of the Act which the Conveyancing Act 1881 did not repeal; 27 & 28 Vict., c. 114, sec. 17 and 18, and sec. 21, from "either by a party" to "benefice or" inclusive"; and from "or, if the landowner" to "minor or minors" inclusive; and, "or circumstance," twice; and (except as regards Scotland) 40 & 41 Vict., c. 18, sec. 17.

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47 & 48 VICT., C. 18.

The Settled Land Act 1884.

(*Commencement of Act, 3rd July*, 1884.)

Sec. 3.—This Act is to be construed as one with the Settled Land Act 1882.

Sec. 4.—A fine, received on the grant of a lease under the Act of 1882, is to be deemed capital money under that Act.

Sec. 5.—(1.) The notice, required by sec. 45 of the 1882 Act, of intention to make a sale, exchange, partition, or lease, may be notice of a general intention.

(2.) On the request of the trustees, the tenant for life must furnish such particulars and information as may be reasonably required of him as to sales, exchanges, partitions, or leases effected, or in progress, or immediately intended.

(3.) A trustee may, by writing, waive notice or accept less than a month's notice.

Sec. 6.—(1.) In the case of a settlement within the meaning of sec. 63 of the 1882 Act, any consent not required by the terms of the settlement is not, by force of anything in the 1882 Act, to be deemed necessary to enable the trustees of the settlement, or any other person, to execute any trusts or powers created by the settlement.

(2.) In the case of every other settlement, not within sec. 63 of the 1882 Act, if two or more persons constitute the tenant for life, then, notwithstanding anything in sec. 56 of the 1882 Act requiring the consent of all those persons, the consent of one only of those persons is to be deemed necessary to the exercise by the trustees, or by any other person, of any power under the settlement for any purpose provided by the 1882 Act.

Sec. 7.—With respect to the powers conferred by sec. 63 of the 1882 Act, the following provisions are made :—

(1.) Those powers are not to be exercised without the leave of the Court.

(2.) The Court may by order give leave to exercise all or any of those powers, and the order is to name the person or persons to whom the leave is given.

(3.) The Court may from time to time rescind or vary any order or make any new order under this section.

(4.) So long as an order under this section is in force, neither the trustees of the settlement, nor any person other than the person having the leave, shall execute any trust or power created by the settlement, for any purpose for which leave has been given.

(5.) An order under the section may be registered and re-registered as a *lis pendens* against the trustees of the settlement, describing them as "Trustees for the purposes of the Settled Land Act 1882."

(6.) Any person dealing with the trustees is not to be affected by any order made under this section, unless registered and re-registered as a *lis pendens*.

(7.) An application to the Court under this section may be made by the tenant for life.

(8.) An application to rescind or vary an order may also be made by the trustees of the settlement, or any person beneficially interested.

(9.) The person or persons to whom leave is given shall

be deemed the proper person or persons to exercise the powers conferred by sec. 63 of the 1882 Act.

(10.) This section is not to affect any dealings which took place before the passing of this Act.

Sec. 8.—For the purposes of the 1882 Act the estate of the tenant by the curtesy is to be deemed an estate arising under a settlement made by his wife.

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53 & 54 VICT., C. 69.

Settled Land Act 1890.

(*Commencement of Act*, 18*th August*, 1890.)

Sec. 4.—Every instrument whereby a tenant for life (in consideration of marriage or by way of a family arrangement, not being a security for a loan) assigns or creates a charge on his interest under the settlement shall be deemed (whether made before or after this Act) one of the instruments creating the settlement, and not an instrument vesting in any person any right as assignee for value within sec. 50 of the 1882 Act.

Sec. 5.—On an exchange or partition (1) any easement, right, or privilege may be reserved or granted over or in relation to the settled land, or (2) other land or an easement, right, or privilege of any kind may be given or taken in exchange or on partition for land or for any other easement, right, or privilege.

Sec. 6.—A tenant for life may make any conveyance necessary or proper for giving effect to a contract entered into by a predecessor in title, and which, if made by such predecessor, would have been valid as against his successors in title.

Sec. 7.—A lease not exceeding 21 years at the best rent that can be reasonably obtained *without fine*, and whereby the lessee is not exempted from punishment for waste, may be made by a tenant for life—

(1.) Without any notice of intention to make it being given under sec. 45 of the 1882 Act; and

(2.) Although there are no trustees of the settlement for the purposes of the Settled Land Acts; and

(3.) By signed writing containing an agreement by the lessee to pay rent, if the term does not exceed three years from the date of the writing.

Sec. 8.—*In a mining lease* (1) the rent may be made to vary according to the price of the substances gotten; (2) such price may be the saleable value, or the price or value appearing in any trade or market or other price list or return from time to time, or may be the marketable value as ascertained in manner prescribed by the lease (including arbitration), or may be an average of any such prices or values during a specified period.

Sec. 9.—Where, on a building grant by a tenant for life, the land is conveyed in fee simple with, or subject to, a reservation thereout of a perpetual rent or rent-charge the reservation shall create a rent-charge in fee simple issuing out of the land, and having incident thereto all remedies for recovery thereof conferred by sec. 44 of the Conveyancing Act 1881, and the rent-charge so created shall go to the same uses and trusts as those upon which the land itself was held before such conveyance.

Sec. 10.—Repeals sec. 15 of the 1882 Act, and provides instead that the principal mansion house (if any), and the pleasure grounds and park and lands (if any) usually occupied therewith, shall not be sold, exchanged, or leased by the tenant for life without the consent of the trustees of the settlement or an order of Court, except (1) where the house is usually occupied as a farmhouse, or (2) where the site of the house and the pleasure grounds and park and lands usually occupied therewith do not together exceed 25 acres in extent. J. 163.

Sec. 11.—Where money is required for discharging an

incumbrance (which is not an annual sum payable only during a life or lives or during a term of years absolute or determinable) on the settled land, the tenant for life may raise such money, and the costs, on mortgage (1) by conveyance of the fee simple or other estate subject to the settlement, or (2) by creation of a term of years in the settled land, or otherwise, and the money so raised shall be capital money for that purpose.

Sec. 12.—Where a sale of settled land is to be made to the tenant for life, or a purchase is to be made from him of land to be made subject to the settlement, or an exchange is to be made with him of settled land for other land, or a partition is to be made with him of land, an undivided share whereof is subject to the settlement, the trustees of the settlement shall stand in the place of the tenant for life, and shall (in addition to their powers as trustees) have all his powers for negotiating and completing the transaction.

Sec. 13.—The improvements authorised by the 1882 Act shall include (1) bridges; (2) making any additions or alterations to buildings reasonably necessary or proper to enable the same to be let; (3) erection of buildings in substitution for buildings in an urban sanitary district taken by a local or other public authority, or for buildings taken under compulsory powers, provided the expenditure does not exceed the amount received for the buildings taken and their site; and (4) re-building the principal mansion house, provided the expenditure does not exceed half of the annual rental of the settled land.

Sec. 14.—Capital money paid into Court may be paid out to the trustees of the settlement for the purposes of the Settled Land Acts.

Sec. 15.—The Court may order capital money to be applied in or towards payment for any improvement authorised by the Settled Land Acts, although a scheme was not, before execution of the improvement, submitted

for approval to the trustees of the settlement or to the Court.

Sec. 16.—If there are, for the time being, no trustees of the settlement for the purposes of the 1882 Act, the following persons shall be such trustees :—

(i.) Any persons for the time being under the settlement trustees, with power of or upon trust for sale of any *other* land comprised in the settlement and subject to the same limitations as the land to be sold, or with power of consent to or approval of the exercise of such a power of sale; or, if no such person, then

(ii.) Any persons for the time being under the settlement trustees with *future* power of sale, or under a future trust for sale of the land to be sold, or with power of consent to or approval of the exercise of such a future power of sale, and whether the power or trust takes effect in all events or not.

Sec. 17.—Repealed by Trustee Act 1893.

Sec. 18.—The provisions of sec. 11 of the Housing of the Working Classes Act 1885, and of any enactment which may be substituted therefor—*i.e.*, *now* sec. 74 of the Housing of the Working Classes Act 1890—shall have effect as if "working classes" included all classes of persons who earn their livelihood by wages or salaries; but this section shall apply only to buildings of a rateable value not exceeding £100 per annum.

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60 & 61 Vict., C. 65.

Land Transfer Act 1897.

(*Commencement of Act, 1st January*, 1898.)

Part I. (*secs.* 1 *to* 5.)—*Establishment of a Real Representative.*

Sec. 1.—*Devolution of legal interest in real estate on death.*—(1.) Where real estate is vested in any person without a right in any other to take it by survivorship, such real estate shall—on his death after 1st January, 1898, and not-

withstanding any dispositions in his will—devolve to and vest in his personal representatives for the time being like a chattel real. (2.) This provision applies to and includes real estate, over which a general power of appointment has been exercised by will. (3.) Probate and letters of administration may be granted as to real estate only, if there is no personalty. (4.) *Real estate* in this Part I. of the Act does not include copyholds in any case in which admission is needed to perfect the title of a purchaser from the customary tenant. (5.) This section only applies to deaths after 1st January, 1898.

Sec. 2.—*Provisions as to administration.*—(1.) Subject to the powers, rights, duties, and liabilities hereinafter mentioned, the deceased's personal representative shall hold his real estate as trustee for the persons by law beneficially entitled thereto; and those persons shall have the same power of requiring a transfer of such realty as those beneficially entitled to personalty have as to such personalty. (2.) All statutory and other rules of law as to (*a*) the effect of probate or letters of administration as to chattels real, (*b*) dealing with chattels real before probate or administration, (*c*) payment of costs of administration and other matters in relation to the administration of personal estate, and (*d*) the powers, rights, duties, and liabilities of personal representatives in respect of personal estate—shall apply to real estate (so far as the same are applicable) as if that real estate were a chattel real vesting in the personal representatives; except that some or one only of several joint personal representatives may not sell or transfer real estate without leave of Court. (3.) In administering the assets of a person dying after 1st January, 1898, his real estate shall be administered *in the same manner*, subject to the same liabilities for debt, costs, and expenses, and with the same incidents, *as if it were personal estate;* but this shall not alter or affect (*a*) the order in which real and personal assets are now applicable

to pay funeral and testamentary expenses, debts, or legacies or (*b*) the liability of real estate to be charged with legacies. (4.) If a deceased leaves real estate, the Court must, in granting letters of administration, consider the rights and interests of persons interested in that real estate; and his heir-at-law (if not one of the next-of-kin) shall be equally entitled to the grant with the next-of-kin; and Rules of Court must be made to adopt the procedure and practice in the grant of letters of administration to the case of real estate.

Sec. 3.—*Provision for transfer to heir or devisee.*—(1.) At any time after the death of any landowner, his personal representatives may assent to any devise contained in his will, or may convey the land to any person entitled as heir, or devisee, or otherwise; and may make such assent or conveyance, either subject or not subject to a charge for the payment of any money which the personal representatives are liable to pay; and on such assent or conveyance, subject to a charge for any moneys which the personal representatives are liable to pay, all liabilities of the personal representatives in respect of the land shall cease, save as to their acts or contracts prior to such assent or conveyance. (2.) At any time after one year from the death of any landowner, if his personal representatives have failed on request to convey the land to the person entitled, the Court (on application of such person and notice to the personal representatives) may order the conveyance to be made or (as to land registered under Land Transfer Act 1875) registration of such person as proprietor, either solely or jointly with the personal representatives. (3.) Where personal representatives are registered as proprietors of deceased's land, no fee is to be paid on a transfer by them which is not made for value (*e.g.*, on a transfer to the devisee or heir). (4.) Production of assent (in a form to be prescribed) of personal representatives of deceased registered

owner of land authorises registrar to register the person named in such assent as proprietor.

Sec. 4.—*Appropriation of land in satisfaction of legacy or share in estate.*—(1.) Personal representatives may (unless deceased's will expressly provides otherwise) with consent of the person entitled to any legacy or share of residue (or, if such person is a lunatic or infant, with consent of his committee, trustee, or guardian) appropriate any part of the deceased's residuary estate in or toward satisfaction of that legacy or share, and may for that purpose value the whole or any part of deceased's property. But no appropriation is to be effectual, until notice has been given to all persons interested in the residuary estate, and any of such persons may then apply to the Court, and the valuation and appropriation shall be conclusive unless the Court directs otherwise. (2.) A conveyance of property so appropriated from the personal representatives to the legatee is not to be liable to higher stamp duty than a transfer of personal property for a like purpose. (3.) As regards land registered under Land Transfer Acts, production of the prescribed evidence of appropriation shall authorise registration of the appropriatee as proprietor.

Sec. 5.—*Liability for duty.*—This part of the Act is not to affect any duty payable in respect of real estate, or impose any new duty on real estate.

Part II. (*secs.* 6 *to* 19.)

These sections contain various amendments of the Land Transfer Act 1875, as to voluntary registration of title, and are not deemed of sufficient importance to the student to be epitomised here—except section 7.

Sec. 7.—*Right to indemnity in certain cases.*—(1.) If any error or omission is made in the register, or any entry is made or procured by fraud or mistake, and the error or omission, or entry, is not capable of rectification under the

Land Transfer Act 1875—any person suffering loss thereby is entitled to indemnity as in this Act provided. (2.) But (*a*) where a registered disposition would, if unregistered, be absolutely void, or (*b*) where the effect of such error, or omission, or entry, would be to deprive a person of land of which he is in possession or in receipt of the rents and profits—the register shall be rectified, and the person suffering loss by such rectification shall be entitled to the indemnity. (3.) No person is entitled to indemnity for any loss which he has caused, or substantially contributed to, by his act or neglect or default; and omission to register a sufficient caution to protect a mortgage by deposit or other equitable interest, or any estate or interest created under Section 49 of the Land Transfer Act 1875, is neglect under this sub-section. (4.) If the register is rectified under the 1875 Act, owing to fraud or mistake in a registered disposition for value, which the grantee was not aware of, and could not by reasonable care have discovered, the person suffering loss by the rectification is entitled to indemnity. (5.) The registrar may decide questions as to indemnity, subject to appeal to the Court. (6.) If indemnity is paid, the registrar may recover the amount paid from any person who caused or substantially contributed to the loss. (7.) A claim for indemnity is to be deemed a simple contract debt, and the cause of action to arise when the claimant knows, or but for his own fault, might have known of the existence of his claim; and this provision is to apply to the Crown.

Part III. (*secs.* 20 *&* 21).—*Compulsory Registration and Insurance Fund.*

Sec. 20.—*Power to require registration of title on sale.*—(1.) An Order in Council may declare as to any county or part of a county defined in the Order, that (after a day named) registration of title to land is to be compulsory on sale; and then no person shall acquire the legal estate in

any freehold land in that county or part of a county under a conveyance on sale executed after the day named, until he is registered as proprietor of the land. (2.) In this section, *conveyance on sale* means an instrument executed on sale which confers or completes a title under which application for registration as first proprietor of land may be made under the Land Transfer Act 1875. (3.) A registered title under this section shall be not less than a possessory title, but may be any other title (absolute, or qualified) if the registrar is satisfied. (4.) Orders in Council under this section may be revoked or varied. (5.) Six months' notice of intention to make an Order under this section must be given to the county council, and a draft of the Order, and the site of the district registry office, must be advertised in the Gazette. (6.) If the county council within three months after the notice dissent from the proposed Order, it shall not be made. (7.) The first Order under this section shall not affect more than one county. (8.) No further Order can be made under this section until three years after the first Order, and then only on application of a county council. (9.) Every Order is to be laid before Parliament, and is to be void if either House votes disapproval of it within 40 days. (11.) *County* has the same meaning as in Local Government Act 1888, and includes a county borough.

Sec. 21.—*Insurance fund for providing indemnity.*—An insurance fund for providing indemnity payable under this Act is to be raised by setting aside each year a part of the fees taken in the land registry; and, if the fund prove insufficient to pay indemnity for any loss chargeable thereon, the deficit is to be made up out of the Consolidated Fund.

Part IV. (*secs.* 22 *to* 26).—*Miscellaneous.*

Sec. 22 enables rules to be made for carrying out the Act.

Sec. 23 enables the Government to buy up the three

Yorkshire deed registries by agreement with the county councils so as to merge them in the land registry.

Sec. 24.—*Interpretation.—Land* (in this Act and the 1875 Act) shall include all hereditaments (corporeal and incorporeal); but this Act is not to compel registration of title to an incorporeal hereditament, or to mines or minerals apart from the surface, or to a lease having less than 40 years to run or two lives to fall in, or to an undivided share in land, or to freeholds intermixed and indistinguishable from lands of other tenure, or to corporeal hereditaments parcel of a manor and included in a sale of the manor as such. *Personal representative* in this Act means an executor or administrator.

III.—LIST OF IMPORTANT STATUTES.

13 Edw. 1, c. 1	De Donis.
18 Edw. 1, c. 1	Quia Emptores.
27 Hen. 8, c. 10	Statute of Uses.
32 Hen. 8, c. 1	Statute of Wills.
1 Vict., c. 26	Wills Act 1837.
15 & 16 Vict., c. 24	Wills Act 1852.
24 & 25 Vict., c. 114	Wills Act 1861.
13 Eliz., c. 5	Fraudulent Dispositions.
27 Eliz., c. 4	Voluntary Conveyances.
56 & 57 Vict., c. 21	Voluntary Conveyances Act 1893.
12 Car. 2, c. 24	Abolition of Old Tenures Act 1660.
22 & 23 Car. 2, c. 10	Statute of Distribution.
47 & 48 Vict., c. 71	Intestates Estates Act 1884.
53 & 54 Vict., c. 29	Intestates Estates Act 1890.
4 Geo. 2, c. 28	The Landlord and Tenant Act 1730.
11 Geo. 2, c. 19	The Distress for Rent Act 1737.
46 & 47 Vict., c. 61	Agricultural Holdings Act 1883.
39 & 40 Geo. 3, c. 98	Accumulations Act 1800 (Thellusson Act).
55 & 56 Vict., c. 58	Accumulations Act 1892.
1 Will. 4, c. 40	Executors Act 1830.
1 Will. 4, c. 46	Illusory Appointments Act 1830.
37 & 38 Vict., c. 37	Powers of Appointment Act 1874.

2 & 3 Will. 4, c. 71	Prescription Act 1832.
3 & 4 Will. 4, c. 74	The Fines and Recoveries Act 1833.
3 & 4 Will. 4, c. 104	The Administration of Estates Act 1833.
32 & 33 Vict., c. 46	The Administration of Estates Act 1869.
3 & 4 Will. 4, c. 105	The Dower Act 1833.
3 & 4 Will. 4, c. 106	The Inheritance Act 1833.
3 & 4 Will. 4, c. 27	Real Property Limitation Acts 1833, 1837 and 1874.
1 Vict., c. 28	
37 & 38 Vict., c. 57	
1 & 2 Vict., c. 110	Judgments Act 1838.
18 & 19 Vict., c. 15	Judgments Act 1855.
27 & 28 Vict., c. 112	Judgments Act 1864.
51 & 52 Vict., c. 51	Land Charges Registration Act 1888.
8 & 9 Vict., c. 106	Real Property Act 1845.
8 & 9 Vict., c. 112	Satisfied Terms Act.
12 & 13 Vict., c. 26	Leases Act 1849.
17 & 18 Vict., c. 113	Real Estate Charges Acts.
30 & 31 Vict., c. 69	
40 & 41 Vict., c. 34	
18 & 19 Vict., c. 43	Infant Settlement Act 1855.
20 & 21 Vict., c. 57	Married Women's Reversionary Interests Act 1857 (Malin's Act).
22 & 23 Vict., c. 35	Law of Property Amendment Acts 1859 and 1860.
23 & 24 Vict., c. 38	
30 & 31 Vict., c. 48	Sale of Land by Auction Act.
31 Vict., c. 4	Sales of Reversions Act 1857.
31 & 32 Vict., c. 40	Partition Acts.
39 & 40 Vict., c. 17	
33 Vict., c. 14	Naturalization Act 1870.
33 & 34 Vict., c. 23	The Forfeiture Act 1870.

33 & 34 Vict., c. 93 - -	Married Women's Property Acts. (The two first of these Acts are repealed, but should still be considered on account of matters occurring before 1st January, 1883.)
37 & 38 Vict., c. 50 - -	
45 & 46 Vict., c. 75 - -	
47 & 48 Vict., c. 14 - -	
56 & 57 Vict., c. 63 - -	
36 Vict., c. 12 - - -	The Custody of Infants Act 1873.
49 & 50 Vict., c. 27 - -	Guardianship of Infants Act 1886.
54 Vict., c. 3 - - -	Custody of Children Act 1891.
37 & 38 Vict., c. 78 - -	Vendor and Purchaser Act 1874.
40 & 41 Vict., c. 33 - -	The Contingent Remainders Act 1877.
51 & 52 Vict., c. 8, secs. 21, 22 - - - - -	Customs and Inland Revenue Act 1888.
52 Vict., c. 7, secs. 10 to 15 - - - - -	Customs and Inland Revenue Act 1889.
54 & 55 Vict., c. 39, secs. 11—15, 59, 117, 118 -	Stamp Act 1891.
57 & 58 Vict., c. 30 - -	Finance Act 1894.
59 & 60 Vict., c. 28 - -	Finance Act 1896.
44 & 45 Vict., c. 41 - -	Conveyancing and Law of Property Acts 1881, 1882, and 1892.
45 & 46 Vict., c. 39 - -	
55 & 56 Vict., c. 13 - -	
45 & 46 Vict., c. 38 - -	Settled Land Acts 1882, 1884, 1887, 1889, and 1890.
47 & 48 Vict., c. 18 - -	
50 & 51 Vict., c. 30 - -	
52 & 53 Vict., c. 30 - -	
53 & 54 Vict., c. 69 - -	
51 & 52 Vict., c. 42 - -	Mortmain and Charitable Uses Acts, 1888, 1891, and 1892.
54 & 55 Vict., c. 73 - -	
55 & 56 Vict., c. 11 - -	
53 & 54 Vict., c. 62 - -	Companies (Memorandum of Association) Act 1890.

53 & 54 Vict., c. 63 - -	Companies (Winding up) Act 1890.
56 & 57 Vict., c. 53 - -	Trustee Acts 1893 and 1894.
57 & 58 Vict., c. 10 - -	
57 & 58 Vict., c. 46 - -	Copyhold Act 1894.
58 & 59 Vict., c. 25 - -	Mortgagees Legal Costs Act.
59 Vict., c. 8 - - -	Life Assurance Companies (Payment into Court) Act 1896.
59 & 60 Vict., c. 35 - -	Judicial Trustees Act 1896.
60 & 61 Vict., c. 65 - -	Land Transfer Act 1897.

IV.—TEST QUESTIONS ON THE LAW OF REAL AND PERSONAL PROPERTY.

1. Explain the origin of the terms "Real" and "Personal" property respectively, stating some essential differences between the two.

2. What are the different freehold estates in land, and the estates less than freehold respectively?

3. How is it that, notwithstanding 12 Car. 2, c. 24, the following special and peculiar tenures still exist:—(*a*) Gavelkind; (*b*) Borough English; (*c*) Grand Serjeanty; (*d*) Petit Serjeanty; (*e*) Frankalmoign?

4. How do you account for the origin of copyholds? Point out the main distinctions between freeholds and copyholds.

5. Explain the relative rights of the lord and his tenant in copyholds.

6. What is the object of enfranchising copyholds, and state how an enfranchisement may be effected, pointing out any differences that occur when the enfranchisement takes place at the instance of the lord or the tenant respectively?

7. On an enfranchisement of copyholds, who has the right to the mines and minerals?

8. To whom do enfranchised copyholds escheat, when the owner dies intestate and without an heir?

9. What differences are there between ordinary copyholds and customary freeholds?

10. An estate may be the same as another in quality, and yet different to it in quantity. What do you understand by this?

11. What difference (if any) is there in the case of free-

holds between a grant or devise to A, and a grant or devise to A and his heirs?

12. Can personalty be limited by way of estates to one and then to another? What would be the effect of a grant or devise of personalty to A for life, and then to B absolutely?

13. It is desired that personalty shall be so settled that A may enjoy it for his own life, then B, if he survives, for his life, and then that it shall go absolutely to a certain person. In what way may this object be accomplished?

14. Give an instance of the application of the maxim: *Cujus est solum ejus est usque ad cœlum.*

15. Explain the position of a tenant for life with regard to the following three particulars: (*a*) waste; (*b*) granting leases; (*c*) selling the estate.

16. Explain practically the effect of the Apportionment Act 1870 (33 & 34 Vict., c. 35).

17. What was originally, and what is now, the effect of a grant of freeholds to A and the heirs of his body? Refer to the statute on the subject, and explain how you account for its having been passed.

18. By what words can you create an estate tail (*a*) in a deed (*b*) in a will?

19. How was the object of the statute *De Donis* frustrated? How is this frustration, originally accomplished in a circuitous way, now effected? Name the present authority.

20. What is the effect of a limitation of copyholds to A and the heirs of his body?

21. Explain the position of a tenant in tail with regard to waste, showing in what respects his position is different if he is a tenant in tail after possibility of issue extinct.

22. When is there a protector to a settlement? What are his powers and position? How do you account for the existence of such an office?

23. What is a base fee? How may it be created? How may it be enlarged into a fee simple absolute?

47. With regard to the same rule, what was the effect of 8 & 9 Vict., c. 106, sec. 8, and 40 & 41 Vict., c. 33, respectively?

48. Grant to A for life, and after his decease to the heirs of B. A dies during B's lifetime. What becomes of the estate?

49. Explain and illustrate the doctrine of *cy près*—(*a*) as regards contingent remainders, (*b*) as regards charitable bequests.

50. Define an executory interest. In what two ways may an executory interest arise? Why is it that it can only arise in a deed by means of the Statute of Uses?

51. Distinguish between a shifting and a springing use respectively, giving an instance of each.

52. Within what time must an executory interest arise? What is the leading case on the subject?

53. Give the provisions of the Thellusson Act (39 & 40 Geo. 3, c. 98), limiting the period for accumulation of income. State particularly the exceptions in the Act. How was it amended by the Accumulation Act 1892?

54. What is the effect of a direction to accumulate income exceeding the period allowed by the Thellusson Act? Refer to the leading case on the point.

55. Define a power of appointment, showing how it operates, and explaining why it properly comes under the denomination of an executory interest.

56. Does an appointee, taking under a power, take simply from the person *exercising* the power, or from the person *creating* the power? Explain your answer by illustrations.

57. What difference is there as regards the rule against perpetuities between a general and a special power respectively?

58. What is the effect, under 12 & 13 Vict., c. 26, of a lease made by a limited owner under a power, but not strictly in conformity with the terms of that power? What

would have been the position in such a case prior to the Act?

59. A tenant for life mortgages his life interest. Does this mortgage affect the power of leasing conferred on him by the Settled Land Act 1882?

60. Powers may be classified as (1) general and special, (2) appendant, in gross, and collateral. Explain and instance each of these.

61. With regard to powers, explain the effect of 1 Wm. 4, c. 46, and 37 & 38 Vict., c. 37, respectively.

62. Define incorporeal property, and compare the mode of conveying it with the original mode of conveying corporeal property. Why can either property be now conveyed by deed of grant?

63. Define and compare rights of common and easements respectively.

64. What do you understand by a *profit à prendre*? Give an instance. What do you understand by a *profit à prendre* being claimed in a *que estate*?

65. What rights cannot be claimed by custom?

66. Give an instance of an easement arising by necessity.

67. How many kinds of rights of common are there? Explain each kind.

68. With regard to an easement, explain what is meant by the dominant and servient tenements respectively.

69. What are the chief ways in which an easement may be extinguished? What is the one case in which unity of possession will not extinguish an easement?

70. With regard to the length of time of enjoyment that will give a title either to a right of common, or an easement, state the provisions of the Prescription Act (2 & 3 Wm. 4, c. 71). What was the law on this point prior to that Act?

71. What is an advowson? How many kinds of advowsons are there? Distinguish between each.

72. Are advowsons and next presentations respectively, real or personal property?

73. What is the proper length of title to be shown to an advowson?

74. What are tithes? Distinguish between tithes, a tithe rent-charge, and a modus. Explain how it was that tithes came into lay hands.

75. If a person having a right to tithes bought the land out of which the tithes issued and subsequently resold that land, would his right to tithes revive? Does merger occur of a tithe rent-charge?

76. How is payment of tithes enforced under the Tithe Act 1891? What is the effect of a lessee's covenant to pay tithes?

77. What tithe must be given on a sale of tithes?

78. What is a Resignation Bond, and when is it valid?

79. Define simony, and refer to the point decided in the case of Fox v. Bishop of Chester. What purchase of a living by a clergyman would be simoniacal, although not so on the part of a layman?

80. On the death of an incumbent, explain the rights and liabilities as to dilapidations as between his representatives and the successor to the living.

81. What bearing respectively did the Statute of Frauds (29 Car. 2, c. 3, secs. 1, 2 and 3), and the Real Property Act 1845 (8 & 9 Vict., c. 106, sec. 3), have upon leases?

82. What is the effect of a parol lease for four years?

83. A, having a lease for seven years, holds over after the expiration of that lease. Explain his position directly the lease expires, and how and why that position becomes altered by the acceptance of rent by the landlord.

84. What is the effect of a yearly tenant not quitting in pursuance of notice (*a*) when the notice is given by the landlord, and (*b*) when the notice is given by the tenant?

85. What is the difference between privity of contract and privity of estate? Give an instance of liability in respect of privity of estate.

86. A, having but an interest consisting of a term of seven years in land, professes to make a lease for twenty-one years. In another case, having no interest at all, he professes to make a like lease. In both cases he immediately afterwards becomes possessed of the fee simple. State fully in each case the position and rights of the lessee.

87. State shortly the provisions of the Conveyancing Act 1881 with regard to forfeitures of leases for breaches of covenant.

88. State the three most prominent alterations in the law of descent introduced by the Inheritance Act, 3 & 4 Wm. 4, c. 106.

89. How has the first rule of descent, viz., that the inheritance shall be traced from the last purchaser, been amended by 22 & 23 Vict., c. 35, secs. 19, 20?

90. Explain the rule as to the admission of the half blood, and compare the position of the half blood with regard to realty and personalty respectively.

91. An estate descends to two daughters as co-parceners. One of them dies leaving a son. To whom does her share go, and why?

92. Distinguish on an intestacy between persons taking *per stirpes* and *per capita*, giving an instance of each.

93. A person dies intestate, leaving (*a*) a wife and two children, (*b*) two children and no wife or other relative, and (*c*) a wife and no other relative. In what way in each case will his personal property go?

94. A person dies intestate, leaving a wife, a father, and a brother. How does his personalty go?

95. A person dies intestate, leaving a mother, a brother, and a sister. How does his personalty go?

96. A person dies intestate, leaving a mother, a brother,

and two nephews, children of a deceased sister. How does his personalty go?

97. A person dies intestate leaving six nephews, five of them being children of a deceased brother, and one the child of a deceased sister. How does his personalty go?

98. A person dies intestate leaving a nephew and two grand nephews, the children of a deceased nephew. How does his personalty go?

99. A person dies intestate leaving one child of a deceased son, five children of a deceased daughter, a wife, and a father. How does his personalty go?

100. What do you understand by hotchpot? Illustrate your answer.

101. Give the outline of a strict settlement of real estate upon marriage, particularly pointing out how the pin money, jointure, and portions respectively are provided for.

102. Give the outline of an ordinary settlement of personal estate upon a marriage. It is desired to settle personalty upon marriage in the same way as if it were realty, viz., in strict settlement. Can this be done?

103. When, and in what way, and to what extent, can infants make valid marriage settlements?

104. On the death of a trustee under a settlement, in what different ways may a new trustee be appointed? On whom does the trust property now devolve on death of a trustee?

105. What leases may, under the Settled Land Act 1882, be made by the tenant for life? Is any consent or notice necessary prior to leasing?

106. The like question as regards a sale by the tenant for life.

107. How may satisfied terms arise? With regard to them, what is now the provision contained in 8 & 9 Vict., c. 112?

108. Are any special formalities necessary to be observed in either an ante-nuptial or a post-nuptial settlement of furniture?

109. What you do understand by uses in strict settlement?

110. Give a short history of the chief different instruments which have from time to time been used to convey lands *inter vivos*.

111. What is the proper mode of conveying copyholds on a sale and on a mortgage respectively?

112. What powers are, by the Conveyancing Act 1881, conferred on mortgagees, and when do they respectively arise? Is it safe to rely on this Act, or should express powers be inserted in the mortgage?

113. What are the differences between the position of a lessee and assignee of a lease respectively?

114. Explain an *interesse termini*.

115. On a lease of a house is there any implied contract by the landlord that it is reasonably fit for habitation? Refer to the Housing of the Working Classes Act 1890.

116. What is the title to be shown on an open contract for the sale of a freehold and leasehold estate respectively?

117. What is the title to be shown to lands which have been the subject of an exchange? Distinguish between the cases of the exchange having been made prior to, and since, 1845.

118. Trace the position with regard to the making of a will of lands from the earliest down to the present time.

119. The like, with regard to a will of personalty.

120. Are the following competent witnesses to a will:—The executor, a creditor of the testator, a legatee under the will, the husband or wife of any legatee, the child of any legatee?

121. State the different ways in which a will may be revoked.

122. A makes a will devising Whiteacre to B, and subse-

quently contracts to sell Whiteacre, and then dies. What is the position of B?

123. When, under a general devise, did trust and mortgaged estates pass? What do the Conveyancing Act 1881 (sec. 30) and the Copyhold Act 1894 (sec. 88) now provide on the point?

124. Explain the following:—General legacy, Specific legacy, Demonstrative legacy, Ademption, Abatement.

125. What is a lapse? What alterations did the Wills Act (1 Vict., c. 26) make in the law of lapse?

126. When does a legacy carry interest?

127. Give two instances of a construction being placed on words in a will different to what would be put on the same words in a deed.

128. Devise to X after the death of Y. Does Y take any, and what, estate, and why?

129. What estate do trustees take under a devise to them without words of limitation? What difference was there before 1 Vict., c. 26?

130. Where a testator by his will has charged his real estate with payment of his debts, but has made no express provision as to who is to have the power of sale to raise the necessary money, in whom is the power of sale vested under the provisions of 22 & 23 Vict., c. 35?

131. Limitation to A, and if he shall die without issue to B. What was the effect of this at Common Law, and how has it been affected by 1 Vict., c. 26, and the Conveyancing Act 1882 respectively?

V.—DIGEST OF QUESTIONS AND ANSWERS.

(The Answers, except where other references are given, are composed mainly from Williams' Real Property, Goodeve's Real Property, Williams' Personal Property, and Goodeve's Personal Property, and all due acknowledgment is here made to the Authors and Editors of those works.)

1.—INTRODUCTORY.

Q. Explain the origin and meaning of the distinction between "real" and "personal" property.

A. After 12 Charles 2, c. 24, lands, tenements, and hereditaments were classified as real property, and goods and chattels as personal property. The expressions originated in the legal remedy for the deprivation of possession. When the possession of land was withheld from its rightful owner his remedy was by a real action (*actio in rem*) to recover it; but for a wrongful withholding of goods, the remedy was by a personal action (*actio in personam*) against the wrongdoer for damages, as the goods might have been destroyed. I. 4.

Q. In what essential respects do personal property and real property differ from each other in nature, title, and ownership?

A. Personal property is not affected by the feudal rules of tenure which affect real estate; is essentially the subject of absolute ownership; consists of goods and chattels, and includes interests less than freehold in real property; the remedy for its deprivation has always been by personal action for damages against the wrongdoer; it is transferred by delivery, or bill of sale, or will; and, on the death of the owner, always devolves on his legal personal representative in G. 17, 8.

trust to pay debts and then divide amongst the legatees or next-of-kin; the descent is governed by the law of the owner's domicile, for *mobilia sequuntur personam*. Real property consists of lands, tenements and hereditaments; is practically indestructible, and, therefore, not the subject of absolute ownership, estates only being held in it; is governed by the feudal rules of tenure; the remedy for its deprivation has always been by real action to recover the *res ipsa* (action for the recovery of land); it is transferred by deed or will; on the death of the owner it devolves * on his devisee or heir-at-law, subject, however, to debts if the personalty is insufficient; and its descent and alienation are governed by the *lex loci rei sitæ*.

Q. What is the original meaning of "seised"? How is it usually employed at the present day? Who is seised in fee simple of copyholds? Reconcile your answers with the form of recital common in assurances of copyholds: "whereas A is seized of Blackacre for an estate in fee simple at the will of the lord according to the custom of the manor of K."

S. 21. A. Originally a person was said to be seised if he was in actual possession of land or chattels; but gradually the word was used (and is used now) to denote only the possession of the owner of a freehold interest in land, while the owner of a chattel real is said to be possessed. The lord of the manor is seised. The explanation of the recital is that the word "seised" was not restricted to the possession of a freeholder till long after the forms of pleading from which the recital is derived were established.

Q. What was the effect at Common Law of delivery by one person to another of (a) *seisin of land,* (b) *possession of moveable chattels? Is the effect the same at the present day?*

A. (*a*) It passed a freehold estate in the land, either by

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* But see Land Transfer Act 1897, Part I., *ante*, page 49, as to deaths after 1897.

right or by wrong. Now, it would create a tenancy at will only, unless accompanied by a deed under 8 & 9 Vict., c. 106; and, by the same Act, it cannot pass a larger estate than the feoffor has, even though the deed purports to do so. Also, since the Statute of Uses, unless the feoffment is for good or valuable consideration, or a use is expressly declared in it, there will be a resulting use which will return the legal estate to the feoffor. (*b*) At Common Law, and now, the delivery will pass the ownership, if such is the intention; subject to the general rule *Nemo dat quod non habet* with its recognised exceptions of (1) current coin, (2) negociable instruments, (3) cases where the true owner is estopped by his conduct, (4) dispositions by mercantile agents under the Factors Act 1889, (5) dispositions by a seller or buyer who has got possession under sec. 25 of the Sale of Goods Act, (6) sales under a common law or statutory authority, *e.g.*, by a distrainor or sheriff, and (7) sales to innocent buyers in market overt subject to sec. 100 of the Larceny Act 1861.

Q. Explain the maxim "Corporeal hereditaments lie in livery, incorporeal in grant." Does this maxim require any modification according to the existing law?

A. The maxim means that corporeal hereditaments are capable of actual delivery, and at Common Law were transferred by feoffment with livery of seisin, but incorporeal hereditaments were incapable of actual delivery, and are conveyed by deed of grant. By 8 & 9 Vict., c. 106, corporeal hereditaments lie in grant as well as in livery, and, by the Conveyancing Act 1881, the word "grant" need not be used in a deed of conveyance.

Q. What is the meaning of "personal estate"? Is it synonymous with "moveables"?

A. Personal estate comprises all that property which on the owner's death vests in his executor or administrator, as distinguished from real estate which goes to his devisee or

heir. But see Part I. of Land Transfer Act 1897 as to deaths after 1897 (*ante*, p. 49). It comprises (1) Chattels real, *i.e.*, all interests in land less than freehold, viz., estates for years, at will, on sufferance, by elegit; (2) Moveables, which are inanimate, *e.g.*, chairs, or animate (either *ferœ naturœ* or *domitae*); and (3) Incorporeal chattels, *e.g.*, debts, copyright, patent right.

Q. Give the principal exceptions to the rule that personal property is essentially the subject of absolute ownership and cannot be held for any estate.

A. (*a*) Chattels so closely connected with land that they partake of its nature, pass with it when disposed of, and descend with it to the heir of the deceased owner. These are (1) title deeds; (2) heirlooms, which are strictly chattels that go to the heir by special custom, *e.g.*, crown jewels, coat armour, deed boxes, but popularly (and under the Settled Land Act 1882) are chattels directed by a deed or will to devolve along with freeholds in strict settlement; (3) fixtures; (4) chattels vegetable, not being emblements; and (5) animals *ferœ naturœ*, unless a special property has been acquired in them. (*b*) At law, a term of years might be bequeathed to one person for life and then to another absolutely, but not any other property; in equity, however, all kinds of personalty, except articles *quœ ipso usu consumuntur*, might be given to one for life and then to another; and now, under the Judicature Acts, the equity rule prevails.

Q. What are fixtures? Can a tenant remove them?

A. Personal chattels annexed to the freehold. The Common Law maxim is *Quicquid plantatur solo, solo cedit;* so they were irremovable. But exceptions have always been permitted allowing tenants to remove, during the term, fixtures erected for trade, ornament, or domestic use. And, by the Agricultural Holdings Act 1883, the tenant of a farm or market garden may remove agricultural fixtures on

certain conditions being complied with. (See Elwes v. Mawe, and Notes, in Indermaur's Common Law Cases, 8th edition, 78.)

Q. (a) *On the death of a tenant in fee simple of a house, who is entitled to the fixtures set up by him in it?* (b) *On the death of the tenant for life of a house who would be entitled to the fixtures set up by him?* (c) *When houses or buildings are let for a term of years, and the tenants set up fixtures for the purposes of trade, or of ornament, or domestic convenience, who is entitled to them on the expiration of the term?* (d) *When fixtures are demised with the buildings in which they are, in whom does the property in the fixtures remain?*

A. (*a*) If he devised the house all the fixtures go to the devisee, but, if he died intestate, the legal personal representative takes the fixtures put up for the purposes of trade, ornament, and domestic convenience. (Williams on Executors.) (*b*) The rules as to the right of a tenant for life to fixtures put up by him are not clear, but his executor appears to have the right to all fixtures put up for trade, ornament, or domestic convenience. (*Ibid.*) (*c*) The tenant is entitled to the fixtures, but he must remove them before the expiration of his tenancy; but special rules apply to agricultural tenants. (See previous answer.) (*d*) In the landlord.

Q. Blackstone says: "Property in personal chattels may be either in possession, where a man hath not only a right to enjoy but hath the actual enjoyment of the thing, or else it is in action, where a man hath a bare right without any occupation or enjoyment." Discuss the question whether "property in personal chattels in action," as above defined, is the same as a "chose in action" in the common meaning of the phrase.

A. It is not; for the term "chose in action" is now commonly restricted to a right to the payment of money, while Blackstone's definition includes also the right of a

person out of possession of a specific corporeal chattel, *e.g.*, the rights of a bailor. (Goodeve's Personalty, 2nd edition, 134.)

Q. Explain the following maxims:—(1) *The father to the bough, the son to the plough.* (2) *Mobilia sequuntur personam.*

A. (1) This maxim refers to lands held by the tenure of gavelkind, and signifies that such lands never escheated on attainder, or conviction for murder. (2) This expression means that moveables follow the person and are governed by the law of the owner's domicile, unlike lands which are governed by the *lex loci rei sitæ.*

Q. Explain fully the following terms:—*Emblements, Estate pur autre vie, Springing Use.*

A. *Emblements* are the fruits of the earth produced by labour and manurance, and brought to perfection within the year, *e.g.*, corn, but not clover. The executors of a tenant for life have a right to them, unless the tenancy ends by the act of the tenant for life. When a fee simple owner dies, his devisee takes the emblements (and fixtures) as against his executor; but, on intestacy, the administrator takes them in preference to the heir. *An estate pur autre vie* is a freehold estate held by one man for the life of another; it may arise by direct limitation, or by a life tenant selling his interest. Formerly, if the tenant *pur autre vie* died during the life of the *cestui que vie*, the first person who entered on the lands could hold them as *general occupant* until the *cestui que vie* died; unless, indeed, the grant had been to the tenant and his heirs (or the heirs of his body), in which event the heir took as *special occupant* during the rest of the life of the *cestui que vie*, by virtue of his being named in the grant. But, by the Wills Act 1837 (secs. 3 and 6), the owner of an estate *pur autre vie* may dispose of it by will; and if he does not, and there is no special occupant, the lands go to the legal personal representative of the deceased as part of his personal estate. *A springing use* is an executory interest

arising by deed under the Statute of Uses, *e.g.*, a power of appointment over freehold land.

Q. What is meant by Escheat?

A. *Escheat* is the resulting of freehold estate to the lord of whom it is held, where the tenant dies without disposing of it and without heirs. It is (1) *propter defectum sanguinis* —*i.e.*, where the tenant dies literally without issue; or (2) *propter delictum tenentis*—*i.e.*, where the tenant was attainted for treason or convicted for felony, which corrupted his blood and interrupted the succession. This second kind cannot happen since the Forfeiture Act 1870, except on outlawry in crimimal proceedings. The Intestates Estates Act 1884 extended the law of escheat to incorporeal hereditaments, and to equitable estates in corporeal hereditaments. The Copyhold Act 1894 (sec. 21) enacts that escheat of enfranchised copyholds is to the lord of the manor if the enfranchisement takes place since 16th September, 1887.

Q. Explain the following terms:—Advowson, chief rent, feoffment, shifting use, enfranchisement.

A. *An advowson* is the perpetual right of presentation to an ecclesiastical benefice; it is an incorporeal hereditament, and real property; it is presentative, collative, donative, or elective; it is either appendant to a manor, or in gross, *i.e.*, a separate property; and it is either an advowson of a vicarage or a rectory. *A chief rent*, or quit rent, is a small fixed rent paid by the freehold tenants of a manor, by payment of which they are free from all other service in respect of their tenure. *Feoffment* is a common law conveyance that can only be used to convey a freehold estate in possession in corporeal hereditaments; its requisites are competent parties, words of pure donation, ascertained property, proper words of limitation, livery of seisin (in deed, or in law subsequently perfected by entry during the lives of feoffor and feoffee); and, since the Real Property Act 1845, a deed, unless the feoffment is by an infant over 15, under

the custom of gavelkind. *A shifting use* is an executory interest created under the Statute of Uses, by which the legal seisin of freeholds is moved from one person to another, *e.g.*, the name and arms clause in a will, by which lands are given to A, but, if within a given time he does not take the testator's name and arms, then to B. *Enfranchisement* is the conversion of copyholds into freeholds; and it is either (1) a voluntary enfranchisement at Common Law by the lord conveying the freehold to the tenant, or (2) a voluntary or compulsory enfranchisement under the Copyhold Act 1894. By a Common Law enfranchisement the lord loses all his rights, but, by one under the Copyhold Act, the lord retains his right of escheat and (unless otherwise expressed) his minerals and rights of sporting.

I. 22, 23

Q. Explain heir-at-law, customary heir, heir-apparent, heir presumptive.

A. A man's heir-at-law is the person upon whom, on the man's death intestate, his real estates devolve by the rules of law. A customary heir is one who inherits under any special custom, *e.g.*, Borough English. A man cannot have an heir until he is dead, for *nemo est hœres viventis;* neither can he make his heir, for *solus deus hœredem facere potest, non homo;* but he may have an heir apparent, *i.e.*, some person living who must be the heir if he survive (*i.e.*, an eldest son), or an heir presumptive, *i.e.*, a person who, if the man were to die now, would be his heir but is liable to be cut out by the birth of a nearer relative (*e.g.*, a daughter, who would be ousted by birth of a son).

Q. What is the meaning of "heirs," "issue"? Can a man have more than one heir at the same time? State the effect of a limitation of real estate (1) *in a deed,* (2) *in a will, of*—(a) *to A and his heirs;* (b) *to A for life, with remainder to the heirs of his body;* (c) *to A and his issue male.*

A. *Heirs* is a technical word of limitation used in a deed to signify that the grantee is to take in fee simple; it includes

ancestors and collaterals as well as descendants. *Issue* is a word which corresponds exactly to lineal descendants. A dead man can have more than one heir, *e.g.*, a fee simple would devolve on his eldest son, gavelkind lands would devolve upon all his sons, Borough English lands upon his youngest son, and a tail female on his daughter. (*a*) This gives a fee simple in both cases; (*b*) an estate tail in both cases by the rule in Shelley's Case; (*c*) in a deed, A takes an estate for life for want of technical words of limitation to give more; but, in a will, A takes an estate in tail male.

2.—Tenures, Estates, &c.

Q. Distinguish between allodial lands and feudal lands. Explain—(1) *Tenants in capite;* (2) *lord paramount;* (3) *mesne lords.*

A. Allodial lands were enjoyed as free and independent property, held of no one and charged with no service; the owners could dispose of them at pleasure. Feudal lands were lands held of a superior, subject to the performance of services, generally military; instead of being the absolute owner, the holder of the feud had merely the usufruct, and could not even dispose of that at his pleasure. Tenants *in capite* were those who held feudal lands from the sovereign direct. The king was lord paramount, all lands being in theory held of him. Mesne lords were tenants *in capite,* who had granted out all or part of their lands to be held of them in subinfeudation, a practice abolished by *Quia Emptores.* C. 20.

Q. Trace the causes which led to the decline of the feudal system in England, mentioning any special enactments which tended to that result.

A. The system of subinfeudation, which was an essential element, was found prejudicial to the interests of the chief lords by exposing them to frequent loss of escheats, wardships, and marriages. The Statute of *Quia Emptores*

(18 Edw. 1, c. 1) struck the first great blow at the feudal system by abolishing subinfeudation. The arts of peace were more cultivated, and in various ways the feudal system became inconvenient, the services often being commuted for a money payment called scutage. The final blow to the system was given by 12 Car. 2, c. 24, which abolished the burdensome incidents of feudal tenures, and converted the military tenures into free and common socage.

Q. What was subinfeudation? When, why, and how was it abolished?

A. Subinfeudation was the method by which a feudal owner conveyed those parts of his feud not required by himself, so that the grantee held the fee simple *of him*, subject to the performance of services, and by a tenure similar to his own. Subinfeudation of the fee simple was abolished in 1290, by the Statute of *Quia Emptores* (18 Edw. 1, c. 1), at the instigation of the barons who found their privileges as superior lords were gradually being encroached upon. The statute enacts that every free man may alien his fee simple at pleasure, but that the grantee shall hold of the same chief lord and subject to the same services and customs as the grantor held.

Q. What is meant by a condition, a condition precedent, a condition subsequent, a conditional limitation, surrender, merger? Give an example of each.

A. A condition signifies some quality annexed to an estate, by which it may be defeated, enlarged, or created, upon an uncertain event. A condition precedent is a condition that has to be fulfilled before an estate can vest, *e.g.*, a lease to A, and he to have the fee on paying £1,000. A condition subsequent is a condition by which an estate may be divested, *e.g.*, a lease with a condition of re-entry on breach of covenants. A conditional limitation is where a condition is annexed to an estate in such a way that the estate can only exist during its continuance, *e.g.*, where land is granted to a

man so long as he is parson of Dale. A surrender signifies a yielding up, *e.g.*, if the owner of a particular estate conveys his estate to the reversioner. Merger signifies the destruction of a particular estate by the acquirement of a larger estate, *e.g.*, if a tenant for life acquires the remainder in fee simple.

Q. Describe and distinguish the various kinds of conditional estates.

A. Estates upon condition are those, the existence of which depends on the happening, or not happening, of some uncertain event, whereby the estate may be originally created, or enlarged, or finally defeated. They are on condition *implied*—*e.g.*, a grant of an office or franchise, or *expressed*. A condition expressed is either *precedent*—*i.e.*, where, unless and until the condition is performed, the estate cannot vest; or *subsequent*—*i.e.*, where the estate vests at once, but is liable to be defeated by the grantor re-entering if the subsequent condition is not performed. There is also a conditional limitation—*i.e.*, an estate so limited that it must determine when the contingency on which it is granted fails—*e.g.*, grant to A and his heirs tenants of Dale. Where an estate is granted with a condition which is illegal, or impossible, or repugnant to the nature of the estate—if the condition is precedent, the estate never vests; if subsequent, the grantee gets the estate free from the condition.

Q. Mention the different kinds of estates which may exist in land.

A. Freehold estates, and estates less than freehold. The latter of these are estates for years, estates at will, estates at sufferance, and estates by elegit. The former are (1) Freeholds of inheritance—viz., estates in fee simple and estates tail; and (2) Freeholds not of inheritance—viz., all life estates; and these may be conventional—*i.e.*, created by the act of the parties, or legal (arising by operation of law),

i.e., curtesy, dower, and estates tail after possibility of issue extinct.

Q. What is a freehold estate? Classify freehold estates according to their possible duration. Distinguish between freeholds of inheritance and descendible freeholds.

A. A freehold estate is an estate (either of inheritance or for life) in land of free tenure. It may be a fee simple (absolute, qualified, or conditional); a fee tail (general or special, male or female); estate tail after possibility of issue extinct; a life estate, or an estate *pur autre vie*. Freeholds of inheritance are those which devolve upon the heir-at-law by descent; a quasi fee simple and a quasi entail are sometimes called descendible freeholds, but this is incorrect, because here the heir takes as special occupant and not by descent. (Challis, 327.)

Q. Define (a) *estate in fee simple,* (b) *in fee tail,* (c) *in base fee,* (d) *after possibility of issue extinct,* (e) *at sufferance, and* (f) *chattels real and personal.*

A. (*a*) An estate to a person and his heirs. (*b*) An estate to a person and the heirs of his body, either general or special, male or female. (*c*) The estate created by the barring of an estate tail by a tenant in tail in remainder without the consent of the protector. (*d*) An estate in special tail when the person from whose body the issue are to come dies without issue. (*e*) The estate of a person who, having come lawfully into possession, holds over after the expiration of his lawful title. (*f*) Chattels real and personal are personal property, the first comprising all interests less than freehold in realty, and the latter purely personal property.

Q. Enumerate and classify the various kinds of estates for life which may subsist in freehold and copyhold lands.

A. They are either conventional (*i.e.*, created by the act of the party by deed or will), or legal (*i.e.*, created by operation of law). Conventional life estates are either for the holder's own life or *pur autre vie*. Legal life estates are

dower, curtesy, and estates tail after possibility of issue extinct.

Q. Explain the two methods by which an estate pur autre vie can be created. What was general occupancy? How was it abolished?

A. By an express grant to A to hold during the life of B, or by C, who is a tenant for his own life, assigning his life estate to D. Where a tenant *pur autre vie* died during the life of the *cestui que vie*, any person could enter and hold for the residue of the latter's life and was called a general occupant. By the Statute of Frauds a general occupancy was abolished, and the estate instead was made to devolve on the tenant's executors or administrators and be assets in their hands. This is now the law under the Wills Act 1837. I. 11.

Q. By what words may an estate for years, for life, in tail, and in fee be created by deed and will respectively?

A. No precise words are needed to create an estate for years, but the words used must indicate that the tenant is to hold for a fixed period of time, *i.e.*, for years, months, weeks, or days. An estate for life is created—in a deed by a grant to A for his own life or for the life of another, or by a grant to A simply; but, in a will, the intention must be expressed that the devisee shall not take more than a life estate, because a devise to A simply will give him all the testator's interest unless a contrary intention is expressed (Wills Act 1837, sec. 28). An estate tail is created—in a deed by a grant to A and the heirs of his body; or to A in fee tail (Conveyancing Act 1881, sec. 51); but, in a will, it may be created by any words of procreation evincing the intention, *e.g.*, to A and his seed, to A and his offspring. By the rule of construction in Wild's Case, a devise to A and his children gives A an estate tail if he had no living child when the will was made; but, if A had a child living when the will was made, then A and all his children living at the testator's I. 19.

death are joint tenants in fee simple. A fee simple can be created in a deed only by a limitation "to A and his heirs," or (Conveyancing Act 1881, sec. 51) "to A in fee simple"; but, in a will, a mere devise "to A" without further words of limitation will pass the fee simple or other the testator's whole interest, unless it clearly appears on the face of the will that such was not the testator's intention (Wills Act 1837, sec. 28). In a conveyance by deed to a corporation, the words used would be "to the corporation and their successors."

Q. A gift of freehold lands, held by the giver in fee simple, is made "unto and to the use of A" simply—(a) *In a will made before* 1835; (b) *in a will made in* 1839; (c) *in a deed. What would be the effect in each case? If the deed were executed after December* 31*st*, 1881, *by what alternative form of words could the grantor's entire estate be made to pass to the grantee?*

A. (*a*) *Prima facie*, A takes a life estate only, unless some words can be found in the will to indicate a contrary intention. (*b*) A gets the fee simple, by sec. 28 of the Wills Act 1837. (*c*) A gets a life estate only, because there are no technical words to give him a fee simple or fee tail. A would take a fee simple under a deed since 1881, if the land were conveyed to the use of A and his heirs, or to the use of A in fee simple.

Q. Mention the various cases in which an estate in lands may be made to vest by virtue of a statute or statutory authority.

A. This would happen by virtue of the Statute of Uses in the following cases:—(1.) Bargain and sale. (2.) Lease and release. The two conveyances are now obsolete. (3.) Covenant to stand seised to uses. (4.) Appointment of freeholds under a power. (5) Grant to uses. Also, under the Trustee Act 1893, where the Court makes a vesting order; by declaration in a deed appointing new trustees, under the same Act; under sec. 5 of the Conveyancing

Act 1881, on paying the amount of an incumbrance into Court; by a tenant for life under the provisions of the Settled Land Acts; by order of the County Court, for cost of improvements under the Agricultural Holdings Act 1883; under the Judicature Act 1884, where the Court nominates a person to execute a conveyance, when one ordered by the Court to do so neglects or refuses; by award of the Board of Agriculture made under the Copyhold Acts, or the General Inclosure Acts, or for redemption of tithe rent-charge, or of quit rents, &c.; and under the Land Transfer Acts 1875 and 1897.

3.—Life Estates, Settled Land Acts, &c.

Q. What estate or interests may be created in land with regard to their quantity and quality respectively? What difference is there in the quality of an estate limited to A for life, and of an estate limited to A for 1000 *years if he shall so long live?*

A. The quantity of an estate means the time of its continuance. The quality of an estate has reference to whether it is (1) freehold or less than freehold; (2) legal or equitable; (3) in possession or expectancy; (4) in severalty, in joint tenancy, in tenancy in common, or in coparcenary; (5) absolute or conditional. The difference is that the life estate is freehold and real estate, and the term of years is less than freehold and personal property.

Q. Define legal waste and equitable waste.

A. Legal waste is such waste as a Court of Law took cognizance of; but if a life estate were granted without impeachment for waste, although at law the tenant could commit any kind of waste, a Court of Equity would not allow the tenant to do such unconscionable acts of waste as pulling down or destroying the mansion house or cutting ornamental timber, and so these acts were called equitable waste. Under the Judicature Act 1873, the rules of equity prevail.

Q. (a) *What is meant by voluntary waste and by permissive waste?* (b) *Is the estate of a legal tenant for life liable after his death to the remainderman for permissive waste suffered in his lifetime?* (c) *Will the Court interfere at the instance of a remainderman to restrain a tenant for life from suffering permissive waste upon the trust property?*

I. 13. A. (*a*) Waste is any spoil, injury, or destruction to, or alteration of, the inheritance. Voluntary waste is waste committed by actually pulling down, altering, or injuring the property; permissive waste is allowing the property to deteriorate for want of repairs. (*b*) A tenant for life is liable for all acts of voluntary waste, but not for permissive waste (*Re* Cartwright, Avis v. Newman, 41 Ch. D., 532) unless the instrument creating his estate expressly makes him so (Woodhouse v. Walker, 5 Q. B. Div., 404); and his estate would be answerable or not accordingly. (*c*) Not unless the tenant for life was expressly bound not to commit such waste (Woodhouse v. Walker, *supra*).

Q. A freeholder, having granted a lease for years at a rent payable quarterly, dies during the last quarter of a year intestate. The rent was three-quarters of a year in arrear at his death, and the fourth quarter's rent has become payable. To whom does the whole year's rent belong, and by whom must it be received?

I. 18. A. The three-quarters' arrears of rent, being actually due at the death, belong to the legal personal representatives of the dead landlord, who may sue and distrain for them. The proportion of the fourth quarter's rent up to the death also belongs to them, and the balance belongs to the remainderman, reversioner, heir, or devisee (as the case may be); but the whole quarter's rent must be sued and distrained for by the remainderman, &c., who is personally liable to the representatives in an action by them for the apportionment. (See the Apportionment Act 1870, 33 & 34 Vict., c. 35.)

Q. State briefly the effect of the regulations under which

the powers given to the tenant for life under the Settled Land Act 1882 *are to be exercised.*

A. Under the 1882 Act, sec. 45, a month's notice must first be sent by registered post to the trustees and their solicitors, if known; but, under the 1884 Act (sec. 5), this may (as regards a sale, exchange, partition, or lease) be a general notice, and be waived or shortened; and, under the 1890 Act (sec. 7), a lease for 21 years without fine can be made without notice. Under the 1890 Act (sec. 10) no sale, exchange, or lease of the principal mansion-house or park can be made without consent of the trustees or an order of Court, unless the house is a farmhouse, or the house and park do not exceed 25 acres. Under the 1882 Act (sec. 37), heirlooms cannot be sold without an order of Court. Under secs. 3 and 4, a sale is to be at the best price that can be obtained, either by public auction or private contract, together, or in lots. Under sec. 7, the lease must be at the best rent that can be obtained, to take effect in possession not later than 12 months after its date, and is to contain a covenant for payment of rent, and a condition of re-entry on non-payment for a time not exceeding 30 days. Secs. 8—11 contain further regulations specially relating to building and mining leases.

Q. The following devise is contained in a will duly executed:—"I devise my land to B for life, with remainder to C in fee simple." B wishes to sell the land, and to convey in fee simple to purchaser without the concurrence of C. What steps ought B to take? How must the purchase-money be paid?

A. B is tenant for life under the Settled Land Acts: he should apply to the Court, under section 38 of the Settled Land Act 1882, to appoint two trustees of the settlement for the purposes of that Act; then give one month's written notice to such trustees of his intention to sell; sell, and convey to the purchaser by deed free from the trusts of the settle-

ment. The purchase-money must be paid to the two trustees or into Court as B directs; and must then be invested as capital money. If testator died after 1897, B must get the personal representative to assent to the devise, *ante*, page 51.

Q. State the effect of the general regulations under which a tenant for life may lease settled lands for building and mining purposes.

A. The term may not exceed 99 years for a building lease, and 60 years for a mining lease. The lease mnst be by deed; to take effect in possession within 12 months; must reserve the best rent, regard being had to any fine (which by the 1884 Act is capital money) and to any money laid out for the benefit of the settled land and to the circumstances; must contain a covenant to pay rent, and a right of re-entry if the rent is not paid within 30 days; a counterpart must be executed by the lessee and delivered to the tenant for life. The building lease must be made partly in consideration of the erection, or improvement, or repair, of buildings or improvements; a peppercorn rent may be reserved for the first five years; if the land is to be leased in lots, the entire rent may be apportioned, but the rent on each lot must not be less than ten shillings, nor greater than a fifth of the annual value of the land after the buildings are erected. The 1889 Act allows a building lease to contain an option for the lessee to buy the fee simple within a specified time not exceeding ten years at a specified price. In the mining lease, the rent may be an acreage or a tonnage rent; and a minimum rent may be reserved, with power to make up back-workings or not; and the tenant for life gets three-quarters or (if impeachable for waste) only a quarter of the rent, the rest being capital. The tenant for life must give one month's notice to the trustees, which (by the Act of 1884) may be a general notice and may be waived or shortened. (Settled Land Act 1882, secs. 6-11, 45.)

Q. How can land, of which an infant is seised in fee, be conveyed?

A. If the infant is entitled in his own right, the land is deemed settled land, and all the powers under the Settled Land Acts can be exercised by the trustees of the settlement or (if none) by a person appointed by the Court on application of the guardian or next friend of the infant by originating summons (Settled Land Act 1882, secs. 59, 60). If it is gavelkind land and the infant is 15, he conveys by written feoffment. If the infant is a male of 20 or a female of 17, the infant can convey with the approval of the Court, to make a marriage settlement (18 &19 Vict., c. 43). If the infant is a trustee or mortgagee, the Court can make a vesting order or can appoint a person to convey, under secs. 26, 28 and 33 of the Trustee Act 1893. In any case the infant can convey by deed, which is voidable by him on attaining 21, but if not then promptly repudiated becomes binding (Edwards v. Carter, 69 L. T., 153). J. 236. J. 236.

Q. By whom are the powers conferred by the Settled Land Acts exercisable when the tenant for life is (a) *an infant*, (b) *a married woman*, (c) *a lunatic?*

A. (*a*) By the trustees of the settlement, and, if there are none, then by such persons and in such manner as the Court, on the application of a testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders (sec. 60). (*b*) If the property is separate property by the married woman; and, if it is not separate property, by her and her husband together (sec. 61). (*c*) By the committee of his estate, under an order from the Lord Chancellor, obtained on petition by the committee or any person interested in the settled land (sec. 62). If the tenant for life is simply a person of unsound mind, only the powers of leasing under the Settled Land Acts can be exercised (*Re* Salt, 73 L. T., 598).

Q. What are the provisions of the Settled Land Act 1882

with reference to the assignment or release of, or the restriction of the exercise of, the tenant for life's powers? and what is the effect of a conflict between those powers and any other powers given by the settlement?

A. Sec. 50 provides that the powers do not pass to an assignee, but remain exercisable by the tenant for life; but, if he has assigned his estate, he cannot exercise his powers to the prejudice of the assignee, except that if the assignee has not gone into possession he may still exercise his power of leasing without the assignee's consent if no fine is taken. By secs. 50, 51 and 52 any contract by the tenant for life not to exercise his powers is void, and any prohibition or forfeiture on exercise of such powers is also void (see Ames v. Ames, 1893, 2 Ch., 479). By sec. 57 a settlement may confer larger or additional powers than those contained in the Act. By sec. 56, in case of conflict between the provisions of the Act and those of the settlement, the Act is to prevail.

Q. What is necessary in order to render persons who are trustees of a settlement "trustees for purposes of the Settled Land Acts 1882 *to* 1890"?

A. (1) They must be trustees with power of selling the settled land, or of consenting to or approving of a sale; or (2) they must be declared in the settlement to be trustees for the purposes of the Acts; or (3) they must be trustees with power of selling other land comprised in the settlement and subject to the same uses; or (4) they must be trustees with a future power of sale; or (5) they must be appointed by the Court.

Q. For what purpose of the Conveyancing Act 1881 *and the Settled Land Act* 1882, *respectively, are trustees of a settlement needed, and who would be trustees for those purposes if none were appointed by the settlement?*

A. Under section 42 of the Conveyancing Act 1881, trustees are needed where the beneficial owner of land is an infant, and, if a female, is unmarried, for the purpose of

managing the property, and applying the income as directed by that section. Under the Settled Land Act 1882, trustees are needed—(1) to receive notice of the tenant for life's intention to exercise his powers under the Act; (2) to consent to a sale or lease of the mansion and demesne; (3) to consent to a sale of ripe timber where the tenant for life is impeachable for waste; (4) to approve a scheme for improvements; (5) to receive and pay money; (6) to make investments under the direction of the tenant for life; and (7) to exercise the powers of the life tenant, where such tenant is an infant, or if the tenant wishes to sell to himself. Under both Acts, if there are no trustees under the settlement, the Court will appoint trustees, on application by originating summons.

Q. What are the provisions of the Settled Land Act 1882 *with reference to the cutting and sale of timber by a tenant for life?*

A. By sec. 35 a tenant for life—who is impeachable for waste with respect to any timber—may cut and sell that timber, provided it is ripe and fit for cutting, and he gets the consent of the trustees or an order of Court, but three-fourths of the net proceeds are capital and the balance only income. By sec. 29 the tenant may cut and use timber which is not ornamental in order to execute, maintain, or repair improvements under the Act.

Q. The fee simple in land is settled strictly. A is tenant for life in possession, B and C are the trustees of the settlement. Who can sell, and who can convey, the fee simple of the land? To whom must the purchase-money be paid?

A. The Settled Land Acts empower A to sell, and, by deed, to convey the fee simple. The purchase-money must be paid to the trustees for the purpose of the Acts (who are, presumably, B and C), or into Court, for investment.

Q. By a settlement, lands are conveyed to A and B and their heirs, to the use of C for life, with remainder to C's first

and other sons in tail male. The settlement contains a power to A and B to sell the property, and for that purpose to revoke the uses and appoint new ones. (a) *Can A and B sell the property in fee simple during C's life either with or without his consent, and, if so, how would they vest the legal estate in a purchaser; and* (b) *can C sell the property in fee simple, and, if so, by what authority, and how could he vest the legal estate in a purchaser?*

A. (*a*) Having regard to Section 56 of the Settled Land Act 1882, A and B can only sell during C's life with C's consent; but, if C is an infant, A and B can exercise C's statutory powers under sec. 60. If the trustees sell under sec. 56, the parties to the deed would be themselves and C and the purchaser, and the conveyance would take effect under the Statute of Uses as a revocation of the uses of the settlement, and an appointment to the purchaser. (*b*) Yes, by the express provisions of the Settled Land Acts, and without any consent; the parties would be C, and A and B (to acknowledge receipt of the purchase-money), and the purchaser; and the conveyance would take effect under the express statutory authority in sec. 20 of the 1882 Act.

Q. Explain the operation of a conveyance by a tenant for life under the Settled Land Act 1882. *What estates and charges are, and what are not, capable of being over-reached by such conveyance?*

A. It operates by virtue of the Act to pass at once by the deed the estate subject to the settlement, in whatever manner is requisite for giving effect to the sale, exchange, partition, lease, mortgage, or charge. It can over-reach all the limitations, powers and provisions of the settlement, and all estates, interests and charges subsisting or to arise thereunder; but subject to and except (1) estates, interests, and charges which (*a*) have priority to the settlement, or (*b*) are created for securing money actually raised

at the date of the deed, and (2) grants at fee farm rents, and grants of easements or commons or other rights granted for value before the date of the deed. (Sec. 20 of 1882 Act.)

Q. What power is given by the Settled Land Acts for the protection or recovery of settled land?

A. By sec. 36 of the 1882 Act, the Court may approve (1) of any action, defence, petition to Parliament, parliamentary opposition, or other proceeding for protection of settled land; or (2) of any action or proceeding for recovery of such land; and may direct payment of the costs out of the settled property.

Q. A father devised freehold land to trustees (whom he appointed trustees of the settlement) in fee, upon trust to receive the rents, and thereout pay annuities which at present absorb the entire rents, and to pay any surplus to his son till he shall become bankrupt, or assign or encumber his life estate, or die; with an executory trust for the remaindermen on the happening of any such event. No such event has happened. Who can sell the land and convey the fee simple to the purchaser, and who must be parties to the conveyance?

A. Under secs. 2 and 58 of the Settled Land Act 1882, the son is tenant for life; and can therefore sell (under secs. 3 and 4), and convey the estate to the purchaser (under sec. 20). The trustees would usually be made parties to acknowledge receipt of the purchase-money. The son must give notice to the trustees, and it is their duty to bring the matter before the Court if they have reason to think that the sale will not be *bonâ fide* in the interest of all concerned.

Q. State the general nature of the provisions of the Settled Land Act 1882, *sec.* 34, *relative to the application of the purchase-money arising from a sale, under the Act, of a lease for years, or of a reversion expectant on such a lease.*

A. The trustees or the Court may (notwithstanding anything in the Act), require and cause the same to be laid out, invested, and accumulated in such a manner as in the

judgment of the trustees, or the Court, will give the parties interested in that money the like benefit therefrom as they might lawfully have had from the lease, estate, interest or reversion in respect whereof the money was paid, or as near thereto as may be. The object is to prevent a sale, made under the Act, of a limited interest, or an interest not in possession, from operating to the prejudice of any person interested under the settlement, whether tenant for life or remainderman. (Hood and Challis' Conveyancing and Settled Land Acts, notes to sec. 34).

Q. Trustees having a power of sale over a settled estate with the consent of the life tenant in possession, are asked by him to sell the coal under part of the estate separately from the surface. You are requested to advise them if they can, under any circumstances, comply with his wish.

A. Yes, they may under the Trustee Act 1893 (sec. 44), obtain leave to do so on applying to the Chancery Division in a summary way. This enactment replaces the Confirmation of Sales Act 1862, which is repealed. Or the tenant for life may himself, without any leave of the Court, sell under the Settled Land Act 1882 (sec. 17).

Q. State briefly the provisions contained in the Settled Land Acts relating to settlements by way of trusts for sale.

A. By sec. 63 of the 1882 Act, any land which under any instrument, whenever made, is subject to a trust or direction for sale, and for application of the purchase-money or income for the benefit of any person for life or any other limited period, shall be deemed settled land, and the instrument a settlement; and the beneficial owner for the time being of the income shall be deemed tenant for life, and shall have all the powers given by the Act to a tenant for life; and the persons who are trustees for sale or have power to consent to or approve or control a sale, are trustees for the purpose of the Act. By sec. 56 the consent of the tenant for life was needed to enable the trustees to exercise any

powers which the settlement gave them, but which the Act gives to the tenant for life. It was decided that the tenant for life's consent to a sale by the trustees was not needed where it was the positive duty of the trustees to sell, but was needed where the trustees had a discretion (Taylor v. Poncia, 25 Ch. D., 646). By sec. 6 of the 1884 Act, no consent (unless required by the settlement) is now necessary to enable the trustees to exercise the powers which it gives them; and, by sec 7, the tenant for life is not to exercise the powers conferred on him by sec. 63 without the leave of the Court. If the Court makes such an order giving such leave (and as to when it will do so, see *Re* Harding's Settled Estates, 60 L. J., Ch., 277), whilst it is in force the powers of the trustees are superseded; but such order must be registered as a *lis pendens*, otherwise a purchaser from the trustees is protected.

Q. Enumerate the limited owners to whom powers of alienation are given by the Settled Land Act 1882.

A. The person for the time being beneficially entitled under a settlement to possession of settled land for his life (sec. 2 (4)). Also a tenant in tail; a tenant in fee simple with an executory limitation over; the owner of a base fee; a tenant for years determinable on life, or a tenant *pur autre vie*—not holding merely under a lease at a rent; a tenant for life or years determinable on life, whose estate is liable to cease on any event during the life, or to be defeated by an executory gift over, or is subject to a trust for accumulation; a tenant in tail after possibility of issue extinct; a tenant by curtesy; and a person entitled to income of land under a trust or direction for any life, or until sale of the land, or until forfeiture of his interest (sec. 58).

I. 95.

Q. State concisely the purposes to which capital money arising under the Settled Land Acts may be applied.

A. (1) Investment on Government securities; or any securities on which the trustees are, by the settlement, or by

law, authorised to invest; or in bonds, mortgages or debentures, or debenture stock of a railway company in Great Britain or Ireland, incorporated by special statute, and having for ten years previous paid a dividend on its ordinary stock or shares; with power to vary. (2.) In discharge, purchase or redemption of incumbrances affecting the inheritance of the settled estate, or in land tax, tithe rent-charge, Crown rents, chief rents or quit rents affecting the settled land. (3.) In improvements under the Act. (4.) In payment for equality of exchange or partition. (5.) In buying the seignory of freeholds or the fee simple of copyholds, or (6) the reversion or freehold in fee of leaseholds—subject to the settlement. (7.) In buying any fee simple or copyhold lands or leaseholds having 60 years unexpired, with or without minerals. (8.) In buying minerals or mining privileges in fee simple, or for at least 60 years. (9.) In payment to any absolute owner. (10.) In paying costs. (11.) In any other way authorised by the settlement. (Sec. 21; see also secs. 34, 36 and 37.)

4.—Estates Tail.

Q. Explain the meaning of an estate tail. By virtue of what statute is it created? How can a tenant in tail convey an estate in fee simple?

I. 19. A. An estate tail is an estate given to a man and the heirs of his body; it may be general or special, male or female; and it is created by virtue of the statute *De Donis Conditionalibus*. A tenant in tail in possession (or one in remainder with the protector's consent) can convey an estate in fee simple by deed, enrolled in the central office of the High Court within six months. Every tenant in tail can convey a fee simple under the Settled Land Acts, but the entail would attach to the purchase-money until barred.

Q. What were the provisions of the statute "De Donis Conditionalibus"? *State the reasons which led to the enactment, and show how its effects were counteracted.*

A. This statute (13 Edw. 1, c. 1) provided that the will of the donor should be observed *secundum formam in cartâ doni expressam*, and that an estate given to a man and the heirs of his body, should strictly so descend, notwithstanding any alienation by the donee. The reason for this enactment was that a grant to a man and the heirs of his body was construed as creating a conditional fee, that the donee could alienate absolutely on the birth of issue. Its effects were counteracted by the system that grew up of suffering fines and recoveries, of which the first instance (a recovery) was Taltarum's Case, decided about 200 years after the statute.

Q. State shortly the effect of the Fines and Recoveries Act 1833, *as to barring estates tail.*

A. It abolished the methods of barring an estate tail by fine and by common recovery, and substituted a deed executed by the tenant in tail and enrolled in the Central Office of the High Court within six months afterwards. As regards an estate tail in remainder, if the consent of the protector of the settlement is not obtained, a base fee only is acquired.

Q. Under a devise of freehold land to two persons and the heirs of their bodies, what estates are created where (a) *such persons can intermarry, and* (b) *where they cannot?*

A. (*a*) An estate in special tail which will descend only to the heirs of their two bodies. As long as A and B live they share the rents and profits equally; on the death of either the survivor is entitled to the whole for life; and, on the death of the survivor, the heir of their body (if they have intermarried) will succeed by descent. (*b*) A and B are ordinary joint tenants for life; on the death of one the survivor takes the whole for life; but on the death of the

survivor the inheritance is severed, and the heir of the body of A, and the heir of the body B, become tenants in common in tail without further survivorship.

Q. Who is a tenant in tail after possibility of issue extinct? Can he bar the estate tail? Give your reason.

I. 20 A. He is the owner of an estate in tail special (*i.e.*, to him and the heirs of his body by a particular wife) where the particular wife is dead without issue. He is expressly forbidden to bar the entail by 3 & 4 Wm. 4, c. 74 (sec. 18). But he has the powers of a tenant for life under the Settled Land Act 1882.

Q. What difference is there in the effect of a limitation to a man and his heirs male when contained in a deed, and when contained in a will? Explain the reason.

A. In a deed, a fee simple is created, for there are no words of procreation; but, in a will, such words create an estate in tail male, on account of the guiding rule that the intention shall be observed.

Q. Land was limited to A and his heirs by B, his wife. B having died without issue, can A sell the fee simple?

A. In a deed, this limitation would be construed to give A a fee simple, so that A could sell. In a will, the intention of the testator is to be observed, and it would be construed I. 150. to give A an estate in special tail, and after B's death without issue, A being tenant in tail after possibility of issue extinct, could not bar the entail if it still subsisted, and therefore could not sell the fee simple—except under the Settled Land Act 1882, under which he has the powers of a tenant for life.

Q. What analogy to the office of "protector" of a settlement existed before the Fines and Recoveries Act? Show in what respects the establishment of the office was a new departure.

I. 146. A. Before the Act it was absolutely necessary that the first tenant for life who had possession of the land should concur in the proceedings, for no recovery could be suffered

unless on a feigned action brought against the feudal holder of the possession. Now, the office of protector is established when the estate tail is in remainder, but, although the protector is usually the first tenant for life, not more than three persons may be specially appointed by the settlement. A life estate prior to the estate tail does not confer the office of protector, unless it is created by the same deed or will that creates the estate tail.

Q. By marriage settlement freehold lands were limited to A for life, remainder to his first and other sons successively in tail male, remainders over; and copyholds were surrendered to trustees, their heirs and assigns, and leaseholds were assigned to trustees, their executors, administrators, and assigns, upon trusts corresponding with the uses of the freeholds. A is dead, and his first son B, having attained majority, wishes to acquire absolute interests in the whole property. How can this be done?

A. As to the freeholds, B must execute a disentailing deed, and enroll it in the Chancery Division within six months after execution; he will thereby acquire the absolute fee simple in possession. As to the copyholds—(1) if the custom of the manor permits entails, B can bar the equitable entail by surrender or deed enrolled on the court rolls of the manor, and so acquire the absolute estate; (2) otherwise, he has an estate analogous to the old fee simple conditional, and can only acquire the absolute ownership by alienation during the life of his issue. As to the leaseholds, he is absolute equitable owner of them, for words which create an estate tail in freeholds give the absolute ownership of personalty (Leventhorpe v. Ashby).

Q. What is a base fee, and how may it be enlarged into a fee simple absolute?

A. A base fee is one to exist only whilst a certain qualification is attached to it, and the term is particularly applied to the estate which a tenant in tail in remainder creates who

bars the entail without the consent of the protector. Such an estate may be enlarged into a fee simple absolute—(1) by the execution of a new disentailing assurance, with the consent of the protector; (2) by the execution of a new disentailing assurance when the estate tail becomes an estate in possession; (3) by the base fee and the ultimate reversion or remainder in fee simple becoming vested in the same person; and (4) by twelve years' possession after the protector's death, under the Real Property Limitation Act 1874 (37 & 38 Vict., c. 57, sec. 6).

Q. How do an estate tail and a base fee differ respectively from a fee simple.

A. A fee simple is indeterminable, can be alienated by deed or will, and descends to any heir of the purchaser's blood, whether descendant, ascendant, or collateral. An estate tail ends with the issue of the grantee, can descend to such issue only, and is alienated or changed into a fee simple or base fee only under the Fines and Recoveries Act 1833. A base fee is exactly like a fee simple, except that it ceases as soon as the issue of the original grantee in tail becomes extinct.

Q. State the rules for the descent of an estate tail.

A. The first four rules of descent under 3 & 4 Wm. 4, c. 106, only, for, when the issue are exhausted, the estate determines. (1) Descent is traced from the purchaser. (2) The inheritance descends to the lineal issue of the purchaser. (3) Males take before females, and among males of the same degree the eldest takes, whilst females of the same degree inherit equally. (4) The lineal descendants of each person deceased represent their ancestor *in infinitum*.

5.—Devolution on Death.

Q. State the rules of descent of an estate in fee simple where the last purchaser leaves issue, and define last purchaser. When does land, of which a man died seised,

descend on his father, and when does it descend on his eldest brother?

A. See the rules set out in Williams' Real Property, Part I., ch. 9. The rules specially asked for are 1, 2, 3, 4 and 7, but rules 5, 6, 8 and 9 should be considered also to make the answer complete. The last purchaser is the person who last acquired the lands otherwise than by descent, or by escheat, partition or enclosure (3 & 4 Wm. 4, c. 106, sec. 1). When the issue of the purchaser fail, the lands descend upon his father; and if the father is dead, or if he succeeds and then dies without disposing of the lands, they go to the purchaser's eldest brother.

Q. State the alterations introduced by the Inheritance Act 1833 *as to tracing descent from the purchaser and the admission of the half-blood.*

A. Instead of the old rule *seisina facit stipitem*, the rule now is that the descent is to be traced from the last "purchaser," *i.e.*, the last person entitled otherwise than by descent, escheat, partition or enclosure. The half-blood formerly could not inherit, whereas they now inherit—(*a*) next after a kinsman of the same degree of the whole blood and the issue of such kinsman, when the common ancestor is a male, and (*b*) next after the common ancestor, when the common ancestor is a female.

Q. Contrast the rules of succession to real and personal estate respectively, on the death of a person intestate, in relation to—(a) *The root of succession or propositus;* (b) *the position of the mother of the propositus;* (c) *the position of maternal ancestors; and* (d) *the position of the half-blood.*

A. (*a*) As regards realty, descent is traced from the purchaser (that is the person who last acquired the land otherwise than by descent); but the intestate himself is always the person from whom the devolution of personalty is traced. (*b*) As to realty, the intestate's mother (assuming that he was the purchaser) will not inherit until the whole

of the intestate's issue and his paternal line have been exhausted; but, as to personalty, the mother of the intestate shares with his brothers and sisters, provided there be no issue and no father living. (*c*) The maternal ancestors take realty next after the mother, and she cannot take until the paternal line has been exhausted; but no preference is given to the paternal line over the maternal line as regards the personalty, so that the paternal and maternal grandparents would share equally. (*d*) As to personalty, the whole blood and the half-blood of the same degree take together; but, as to realty, the half-blood brother by the same father takes next after the whole-blood sister, whilst the half-blood brother by the same mother takes next after her. These points are governed by the Inheritance Act 1833 and the Statutes of Distribution.

Q. A dies intestate, seised in fee simple of lands and possessed of personal estate. A's father, who was illegitimate, died before him. The only known relations of A who survived him were his mother, his mother's father, a sister, and two nieces, the daughters of a deceased brother. Who are entitled to A's real and personal property respectively? In what shares do such persons take? Are these persons entitled to take possession immediately on A's death?

A. The freeholds devolve upon A's nieces, who take as co-parceners under the Inheritance Act, and they are entitled to take possession immediately—unless A died after 1897, in which case the realty will vest in A's administrator appointed by the Probate Court, and A's heirs can only take possession with the assent of such administrator (see hereon Part I. of Land Transfer Act 1897, *ante*, p. 49.) The personal estate is divided—one-third to A's mother, one-third to his sister, and the remaining third to his two nieces. But these statutory next-of-kin are not entitled to take possession immediately on A's death, as the personalty vests in the President of the Probate Division until a grant of letters of

administration, and then passes to the administrator in trust to pay debts and afterwards divide amongst the next-of-kin.

Q. From whom was the descent of an estate in fee simple traced on death before 1834? *From whom is a descent traced on death after* 1833? *A had two children, B and C; C had a son, D. B purchased land which was conveyed to him in fee simple; he died seised thereof intestate and without issue in* 1832; *C died intestate in* 1835; *A died intestate in* 1837. *None of the persons mentioned in the question left a widow. Who were the persons successively entitled to the land?*

A. From the person last seised, for *seisina facit stipitem.* From the last purchaser, *i.e.*, the person last entitled who did not take by descent, 3 & 4 Wm. 4., c. 106. (1) C, for when B died ancestors could not inherit though collaterals could; (2) A then takes as heir of B the purchaser, 3 & 4 Wm. 4., secs. 2, 6, 11; and (3) D takes next as heir of B, *ibid.*, secs. 2 and 5.

Q. A bought freehold land, and died intestate, leaving a widow and an only child, a daughter. The widow married again and had a son by her second marriage. The daughter has died an infant and without having married, leaving her mother, her half-brother, and a paternal first cousin surviving her. To whom does the land belong?

A. The descent is to be traced from A as "the purchaser" (rule 1); the daughter took by descent and did not break the line of descent; A's issue being extinct, recourse must be had to his lineal ancestor (rule 5), who was his father (rule 6), and who is represented by his lineal descendant, the child of A's brother or sister and first cousin to A's daughter (rule 4). The first cousin, therefore, takes the land, subject to the widow's right to dower, unless that is barred.

Q. Land descended on A from his mother; he settled it upon himself for life, with remainder to his first and other sons successively in tail, with remainder to his own right

heirs. He died a bachelor, and intestate. Is his heir to be traced through his father, or through his mother, and why?

A. Through his father, because the settlement broke the line of descent, and constituted A "the purchaser" (3 & 4 Wm. 4, c. 106, sec. 3), and, as A has no issue, the descent is traced through A's nearest lineal ancestor, who is his father. (Rules 5 and 6.)

Q. What are the different modes of descent of lands held in gavelkind and Borough English respectively?

A. The descent of gavelkind and Borough English lands follows the rules which apply to ordinary freeholds so far as those rules are consistent with the peculiar customs of either tenure, *e.g.*, in both tenures, the descent goes to males before females, to lineal heirs before collateral heirs. In gavelkind, by special custom, all the sons inherit equally, and this applies to collaterals. In Borough English, the youngest son inherits, but this does not apply to collaterals.

Q. A (a bastard) dies intestate, seised in fee simple of land, and leaving a widow, B, and an only child, C. C dies intestate, an infant. Could B at Common Law, and can she now, inherit?

A. B at Common Law could not inherit, as a bastard can have no heirs except those of his body; but, since the Law of Property Amendment Act 1859 (22 & 23 Vict., c. 35), she will inherit, as the heir of C, who was the person last entitled.

Q. Tenant in tail general died in 1880, *leaving issue only three daughters—Mary, Eliza, and Jane. Mary died in* 1883, *leaving a husband and an only son. Eliza died in* 1884, *a spinster. There has been no disentail. Who are now entitled to the land, and in what shares, and for what estates?*

A. Mary, Eliza, and Jane took as coparceners in tail general (rules 1, 2, 3). On Mary's death, her share descended to her son in tail general (rule 4), subject to her husband's life estate by curtesy. On Eliza's death, her share descended

on her sisters Mary and Jane as coparceners in tail general (rules 1, 2, 3), but, Mary being then dead, her share went to her son in tail general (rule 4) freed from curtesy.

Q. A married woman, tenant in tail in possession, dies leaving a husband and an only son; what estates in the land do the husband and son respectively take, and what estates can either of them convey to the other, and by what means?

A. The husband takes a life estate as tenant by curtesy, and the son takes an estate tail subject to that life estate. The husband can by deed surrender his life estate to the son, so as to merge it and accelerate the estate tail into possession. The son can (if 21) bar the entail, and so acquire a fee simple absolute; and he can then convey that estate by a deed of release to his father, and so merge the life estate in the fee. The father also has the powers of a tenant for life under section 58 of the Settled Land Act 1882, and can sell and convey the fee simple to the son under that Act, the result being that the life estate of the father and the estate tail in remainder of the son would attach to the purchase-money and the lands be freed.

Q. What is meant by "next-of-kin" and "statutory next-of-kin"? A dies leaving a father, a mother, a wife, a son, and two grand-daughters, the children of a deceased child. Who are A's next-of-kin, who are his statutory next-of-kin and who are beneficially entitled to the personalty of which he dies intestate?

A. *Next-of-kin* means those who literally are the nearest of kin in the strict sense of the word; while *statutory next-of-kin* means those persons who, under the Statutes of Distribution, are entitled to share in the personal estate of an intestate, and thus includes persons who, not being themselves next-of-kin, take as representing deceased next-of-kin. A's next-of-kin are his father, mother and son. A's statutory next-of-kin are his wife, son, and two grand-daughters; and the wife takes one-third of the personalty, the son another

third, and the two grand-daughters the remaining third equally, because issue of the intestate always take *per stirpes*.

Q. State the general effect of the rules by which the succession to the residue of an intestate's personal estate is regulated.

A. The widow takes a third if the intestate left a child or children; and, subject to her share, the children take the whole equally between them; and, if any child has died leaving issue, such issue always take their parent's share *per stirpes* (*Re* Natt, 57 L. J., Ch., 797). *If there is no issue*, the widow gets £500 charged rateably on the realty and personalty (Intestates Estates Act 1890) and also half the residue, and the other half goes to the next-of-kin, who would be the father, if living. Failing a father, the mother and brothers and sisters of the deceased take equally, and, if any brother or sister is dead leaving issue, the issue take the parent's share *per stirpes* if any of the prior class (*i.e.*, a brother or a sister or the mother) are living. No representation is allowed after brothers' and sisters' children. Beyond the above details it is simply a question for enquiry as to who are the nearest of kin.

Q. A died intestate and childless, and without leaving father or mother, but leaving a widow, a half-brother, and two nephews, the children of his only sister of the whole blood deceased. He never had any other brother or sister. Who are entitled to his real and personal estate respectively, and for what interests, and in what shares?

A. The widow first gets £500 rateably out of the realty and personalty (Intestates Estates Act 1890). Then the widow gets dower (if not barred) out of the real property, and (subject to the dower) the real property goes to the elder of the two nephews absolutely (rule 7). And the personalty goes as to one moiety to the widow, and as to the other moiety half goes to the brother of the half-blood, and the other half equally between the nephews, taking *per stirpes*.

Q. A died intestate, leaving his father, a widow, and a child. B died intestate, leaving several children, but no father, mother or widow. C died intestate leaving no child or representative of one, but a widow and a father. D died intestate leaving no child or representative of one, no father or mother, but a widow and several brothers and sisters. State between whom, and in what shares, the several personal estates of A, B, C, and D are divisible.

A. (1) One-third of A's personalty goes to his widow and the remainder to his child. (2) B's personalty is divided equally amongst his children. (3) C's personalty is divided equally between his widow and father *after* the widow has first got her £500 under the Intestates Estates Act 1890. (4) After D's widow has had £500, half of D's personalty goes to his widow, and the other half equally between his brothers and sisters. (22 & 23 Chas. 2, c. 10; 1 Jac. 2, c. 17, sec. 7; 53 & 54 Vict., c. 29.)

Q. A man died intestate without child or father, but leaving his wife, his mother, two brothers, three sisters, and ten nephews and nieces him surviving. Who are entitled, and in what shares, to his personal estate?

A. The wife takes £500 and a moiety of the balance; and the remaining moiety is divided equally between the mother, brothers, and sisters, the ten nephews and nieces taking *per stirpes* the share to which their deceased parent would have been entitled.

Q. Freehold land was limited to the use of A in tail male, remainder to B in fee. B, by his will, devised all his real estate to A. (1) *If, under these circumstances, A dies intestate leaving issue only a son, what estate will the son take?* (2) *If A dies intestate leaving only a daughter, what estate will the daughter take?* (3) *In either case will A's widow be dowable?*

A. The estate tail does not merge in the remainder in fee because of the statute *De Donis*. (1) The son, therefore,

takes an estate in tail male, with a remainder in fee simple, as heir-at-law of his father the purchaser. (2) The estate tail is extinct, as A the purchaser has no male issue; the daughter, therefore, takes a fee simple absolute in possession by descent from A. (3) In both cases A's widow is entitled to dower if it is not barred.

Q. A testator died in 1883 *having by his will, dated in the same year, bequeathed a share in his residuary estate to trustees, upon trust to pay the income to his daughter for life, and after her death for her children equally. The daughter died in* 1885, *having had three children only—namely, John, who died in the testator's lifetime leaving issue; Henry, who survived the testator and died in his mother's lifetime leaving issue; and Jane, who is living, an infant, and married. Advise the trustees as to the distribution of the fund.*

A. I should advise the trustees that neither John nor his issue took anything, for, though 1 Vict., c. 26 (sec. 33), provides that there shall be no lapse in the case of a gift to a child or other issue of the testator who dies leaving issue, yet it has been held that this provision does not apply to a bequest to children as a class (Brown v. Hammond, 1 Johns, 210). I should advise them that Henry took half, and to enquire whether he had left a will, and, if not, letters of administration must be taken out. I should also advise them that Jane took the other half, but she being an infant it cannot be paid over to her, and a guardian should be appointed. (See Viner v. Francis, Indermaur's Conveyancing and Equity Cases, 7th edition, 38.)

Q. Explain the meaning of the term Hotchpot.

A. Hotchpot appears to have originally meant a pudding, as being composed of things mixed or placed together. It was applied, as regards lands held in the obsolete tenure of frankmarriage, to prevent the owner of such lands taking any share as a coparcener on the death of the ancestor from whom the lands were derived, without bringing those lands

into the common lot. Under the Statute of Distribution, it is used to prevent any child taking a larger share of the personalty of an intestate than he or she would be entitled to if the advances made during the deceased's life were taken into account. And a hotchpot clause is commonly inserted in a settlement of personalty to prevent any child, to whom a share is appointed, claiming to participate in the unappointed part of the settled fund without bringing the appointed share into account.

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6.—Ownership.

Q. Define an estate in severalty, joint tenancy, tenancy in common, and coparcenary.

A. An estate in severalty is held by a man in his own right only, without any other person being joined with him in interest during his estate. A joint tenancy is where an estate is acquired by two or more persons in the same property, by the same title (not being descent), at the same time, and without words importing that they are to take distinct shares. A tenancy in common is where two or more persons hold the same land with interests accruing under different titles, or under the same title (not being descent) but at different periods, or conferred by words of limitation importing that they are to take in distinct share. Coparcenary is where two or more persons inherit, *e.g.*, gavelkind.

Q. State the points of resemblance and of difference between the estates of joint-tenants and coparceners.

A. Both have the same unities of interest, title, and possession. They, however, differ in four material points. (1) Coparceners claim by descent, joint tenants by purchase. (2) There is no unity of time necessary in coparcenary. (3) Coparceners, though they have a unity, have no entirety of interest; and each is properly entitled to the whole of a distinct moiety. (4) There is no *jus accrescendi* or survivorship in coparcenary.

Q. How did a tenancy by entireties arise, and what were its incidents? Can it arise now?

I. 29. A. It arose by a gift to two persons, who were husband and wife, and their heirs. The husband took the rents and profits during his life, but could not dispose of the inheritance without his wife's concurrence. Unless they both agreed in making a disposition, each of them ran the risk of gaining the whole by survivorship, or losing it by dying first. Such a tenancy cannot now arise in consequence of the Married Women's Property Act 1882 (*Re* March, Mander v. Harris, *infra.*).

Q. If freehold land be limited to A and B (husband and wife) and C and their heirs, what shares, estates, and interests, do A, B and C respectively acquire in the land?

I. 30. A. If the limitations are in an instrument coming into operation before 1883, A and B as one legal personage, and C as another legal personage, are joint tenants in fee, and with regard to A and B's rights between themselves they possess a tenancy by entireties. If the limitations are in an instrument coming into operation on or after 1st January, 1883, the result is the same, except as regards the rights of A and B between themselves as to their moiety, which are those of any strangers, and not those of tenants by entireties (*Re* March, Mander v. Harris, 37 Ch. D., 166; *Re* Jupp, Jupp v. Buckwell, 57 L. J., Ch., 774).

Q. By which modes may joint tenancy, tenancy in common, and coparcenary, be converted into estates in severalty?

A. A joint tenancy may be severed by partition (voluntary, or compulsory under the Partition Acts 1868 and 1876, see *post*, page 112); by alienation *inter vivos* of his share by any joint tenant by absolute conveyance (and this includes a mortgage) without partition, which makes the alienee a tenant in common with the remaining joint tenants; by a deed of release to one joint tenant by the others, which gives him an estate in severalty; by the *jus accrescendi;* and

by accession of interest, as if there be two joint tenants for life and one obtains the inheritance, this severs the jointure. A tenancy in common may be severed by partition (as above stated); or by all the titles and shares being united in one person, either by conveyance or descent. Coparcenary may be severed in the same two ways as tenancy in common, and also by one coparcener alienating her share, because that destroys the essential unity of title.

Q. By what words may joint tenancy and tenancy in common respectively be created amongst children? (a) *A father having four children bequeaths his residuary personalty to all his children "equally." One son dies in his lifetime.* (b) *An uncle bequeaths* £2,000 *to his nephews, A, B, and C. A dies in his lifetime. How are the residue and the legacy respectively divisible? Does it in either case make any difference whether the deceased person left issue living at the testator's death?*

A. No technical words are needed, but a gift to children as a class will create a joint tenancy, unless words are used showing that the testator intended each child to take a separate and distinct share. (*a*) This creates a tenancy in common, because of the word "equally," but only the children living at the testator's death will take. (See Brown v. Hammond, *ante*, page 109.) (*b*) The £2,000 legacy creates a joint tenancy, and must be divided between B and C, A's share failing. It makes no difference in either case that the deceased person left issue living at the testator's death.

Q. What is the proper form of assurance between joint tenants, and why? And between tenants in common, and why?

A. Between joint tenants, a deed of release which operates to extinguish a right, for each joint tenant of a freehold estate is already seised of the whole land; but between tenants in common a deed of grant is necessary, for each tenant

in common has a separate title, and is seised of an undivided and certain share, and has to convey that share.

Q. It being a rule of the Common Law that the estate of joint tenants must arise at the same time, state what exceptions have been established to this rule.

A. The exceptions are: (1) Where the estates take effect under the Statute of Uses, *e.g.*, if A limits lands to the use of himself and his future wife for life, and afterwards marries, they are joint tenants for life; (2) devises, which stand on the same footing as uses; and (3) bequests.

Q. How can a partition be obtained between joint tenants or tenants in common when they cannot agree?

I. 33. A. By any of the tenants bringing an action for partition in the Chancery Division, or, if the property does not exceed £500 in value, in the local County Court; or by application to the Land Department of the Board of Agriculture to make an order for partition under their seal. In a partition action—the Court (1) may direct a sale and division of the proceeds at its discretion, (2) may direct a sale on application by any interested party unless the other parties will agree to buy his share, and (3) must direct a sale if parties interested to the extent of a moiety request it, unless it sees good reason to the contrary (31 & 32 Vict., c. 40; 39 & 40 Vict., c. 17).

Q. What is the general rule as to survivorship in—(a) *estates*, (b) *the benefit and burden of covenants*, (c) *the exercise of powers vested in, or entered into by or with, two or more persons? Show what exceptions have been introduced by modern legislation in any of the above-mentioned cases.*

A. (*a*) Survivorship of estates is applicable to joint tenants only, as distinguished from coparceners and from tenants in common. (Edward's Compendium, 3rd edition, 157.) (*b*) In the case of covenants for title *by* joint tenants, each covenants severally as to his own acts, for otherwise all would be liable for the acts of each, and the whole burden of the covenants would devolve on the survivor; but if the

conveyance is to joint tenants, the covenants should be entered into with them jointly, so that the survivors may get the full benefit. (Goodeve's Realty, 3rd edition, 251.) The benefit and the burden of covenants creating a debt entered into by or with two or more persons jointly will pass to the survivor. By the Bankruptcy Act 1883, the discharge of a bankrupt shall not release any person who was jointly liable with him. After the decease of one joint debtor the survivor may be sued for the whole debt as though the deceased had no share in it, and the estate of the deceased will be discharged from all liability both at law and in equity. (Williams' Personalty, 14th edition, 393.) Partnership debts are joint only, but the estate of a dead partner may be separately sued (Partnership Act 1890, sec. 9). (*c*) A power given to two or more persons by name, and not expressly made exerciseable by all or any of them, must be exercised by all the donees, and if one dies the survivor cannot exercise it. But the Trustee Act 1893 (sec. 22) says a power given to two or more executors or trustees jointly may be exercised by the survivor, and the Conveyancing Act 1882 (sec. 6) says that where a joint power has been disclaimed by one of the persons to whom it is given, the others, or other, or survivor, may still exercise it. In both cases a contrary intention expressed in the instruments will prevent the Act applying. (Edward's Compendium, 3rd edition, 211.)

7.—Future Estates and Interests.

Q. What is the difference between a reversion and a remainder?

A. A reversion is the residue of an estate left in the owner of property after he has granted out a smaller (particular) estate than he himself possesses; whilst a remainder is where, by the same instrument that creates the particular estate, the whole or part of the reversion is granted out to

take effect in possession after the particular estate. A reversion arises by act of the law, a remainder by the act of the parties. Tenure exists between the owner of the particular estate and the owner of the reversion, but not between the owner of the particular estate and the remainderman.

Q. Define a vested remainder, a contingent remainder, and an executory interest.

A. A vested remainder is one which is not subject to any condition precedent, but is necessarily capable of taking effect whenever the particular estate on which it is dependent comes to a termination, *e.g.*, grant to A for life, remainder to B and his heirs. A contingent remainder is one of which the vesting in interest is subject to a condition precedent; *i.e.*, where, from some uncertainty, either as to the person intended to take, or the happening of the event on which it is to take effect, the remainder itself is in a state of contingency, *e.g.*, a grant to A for life with remainder to the son of B, a bachelor, or a grant to A for life, remainder to B for life, remainder in case B dies before A to C for life. An executory interest is a future estate, arising of its own inherent strength when the time comes, and not depending for protection on, or waiting for the determination of, a prior estate, but, on the contrary, often putting an end to a prior estate: it is created (1) by deed under the Statute of Uses, when it is called a springing or shifting use, or (2) by will, when it is termed an executory devise.

Q. In what respects do executory interests created by will correspond in their incidents with springing and shifting uses?

A. In that by their means a future estate may be made to spring into existence at a future date, without reference to any particular estate, or after a limitation in fee simple, arising of its own inherent strength, and being in its nature indestructible. Generally the rules as to

executory interests apply to all limitations coming under that denomination, including, for instance, the rule against perpetuities.

Q. State the rules which apply to the creation of both vested and contingent remainders.

A. (1) There must be a particular estate to support the remainder. (2) The particular estate and the remainder must be created by the same instrument. (3) The remainder must be limited to take effect directly the particular estate ends.

Q. What further rules apply to contingent remainders only?

A. (1) If the contingent remainder is freehold, the particular estate must be freehold. (2) The contingent remainder fails unless it is ready to vest before or at the determination of the particular estate. (3) If there is a remainder to an unborn person for life followed by a remainder to the issue of such unborn person, the remainder to such issue is always void (Whitby v. Mitchell, 44 Ch. D., 85)—except where the limitations are in a will and the remainder to the issue is an estate tail, in which case, by the *cy-près* doctrine, the unborn person himself takes an estate tail. (4) If one contingent remainder is limited after another contingent remainder which is not an estate tail, the second one is void if it can transgress the rule against perpetuities, (*Re* Frost, 43 Ch. D., 246.)

Q. Land is conveyed to A for a term of 20 years, with remainder, if B shall survive the term, to B in fee. Is the remainder good, or bad, and why?

A. The limitation to B is a contingent remainder of an estate of freehold; it, therefore, requires a particular estate of freehold to support it, and, as there is no such estate, the contingent remainder is void.

Q. Explain the necessity which formerly existed for trusts to preserve contingent remainders.

A. Because, in the absence of such trusts, if the particular

estate ended by forfeiture, surrender, or merger, before the contingent remainder was ready to vest, such contingent remainder failed, as it had no particular estate to support it. 8 & 9 Vict., c. 106, did away with the necessity for such trusts.

Q. A being seised in fee simple of Blackacre and Whiteacre, subject, as regards Whiteacre, to a legal mortgage in fee simple, settled Blackacre, and the equity of redemption of Whiteacre, on his marriage in 1840 *on himself for life, with remainder to his sons successively, according to seniority in tail, with remainder to himself in fee simple. In* 1841, *before a son was born, he conveyed all his estate and interest in the settled land to B in fee simple. Shortly afterwards a son was born. A died in* 1842. *Had the son any right to either Blackacre or Whiteacre? Give reasons for your answer.*

A. The settlement gave a particular estate to A for life, with a contingent remainder to A's unborn son in tail, with a vested remainder to A in fee simple. As to Blackacre, it would appear that—as A took a legal life estate and a legal vested remainder, in the same right, and without any intervening vested estate of freehold—merger took place and A had a vested fee simple estate which destroyed the contingent remainder, and thus the conveyance to B is valid and A's son has no right; but, as to Whiteacre, the estates are all equitable (the legal estate being in the mortgagee), and A could only convey to B his life estate and his remainder, subject to the rights of his son, consequently the son can claim Whiteacre against B. As to Blackacre, a limitation to trustees to preserve contingent remainders would have prevented merger, and thus preserved the son's rights against B.

Q. What alterations in the law as to contingent remainders were made by the Real Property Act 1845, *and the Contingent Remainders Act* 1877 *?*

A. The two statutes have in most cases, but not in all, done away with Rule 2 in the second answer on p. 115.

8 & 9 Vict., c. 106, sec. 8, enacts that if the particular estate ends by forfeiture, surrender, or merger, before the contingent remainder is ready to vest, such contingent remainder shall not fail; and this rendered trusts to preserve contingent remainders unnecessary. 40 & 41 Vict., c. 33, enacts that if a contingent remainder, created by instrument made since 2nd August, 1877, fails because it is not ready to vest when the particular estate determines, such remainder shall still be capable of taking effect, provided it would have been good originally as an executory interest (*i.e.*, could not infringe the rule against perpetuities) if there had been no particular estate to support it as a remainder.

Q. Lands were limited unto and to the use of trustees in fee, in trust for A for life, with remainder to his first and other sons who should attain the age of 21 *years successively in tail male. A died leaving several infant sons, but no son who had attained* 21. *Would the contingent remainder to his sons fail and, if not, why not?*

A. It would not fail; because the legal estate in fee is given to the trustees and the limitations are of equitable estates only, to which the Common Law, rule 2, in the second answer on page 115 never applied, and the limitations to the sons will take effect quite irrespective of 40 & 41 Vict., c. 33, in favour of the sons who live to attain 21. (*Re* Finch, Abbis v. Burney, 17 Ch. D., 211; 50 L. J., Ch., 348.)

Q. A testator wishes to devise his freehold farm to his nephew, a bachelor, for life, with remainder to the nephew's first son who shall attain 25. *What danger is there of the gift to the son failing?*

A. The nephew being a bachelor, this is a contingent remainder, and liable to fail by the nephew dying before he has a son of that age. The limitation would be void as an executory interest for exceeding the perpetuity rule, so that 40 & 41 Vict., c. 33, would not assist it. (Brackenbury v. Gibbons, 2 Ch. D., 417.)

Q. Real estate is limited to the use of A during his life with remainder to the use of the eldest son of B, a bachelor, in fee simple. State in what events the limitation to the son would formerly have failed. Would it fail at the present day? Give reasons for your answer.

A. It would have formerly failed if A's life estate in any way determined before B had a son, for every contingent remainder of freehold must always have existing a particular estate of freehold to support it. It would not now fail for this reason—for 8 & 9 Vict., c. 106, preserved contingent remainders from failure where the particular estate determined by forfeiture, surrender, or merger; and 40 & 41 Vict., c. 33, provides that a contingent remainder may take effect as an executory interest if it might have been created as such, *i.e.*, if it does not exceed the perpetuity rule.

Q. (a) *Upon the marriage of A, a bachelor, lands were settled upon him for life, with remainder to his eldest son for life, with remainder to the first son of such eldest son in fee. Which of the above limitations would be valid, and which void, and why?* (b) *Lands were devised to A, a bachelor for life, with remainder to his eldest son for life, with remainder to the first and other sons of such eldest son successively in tail. What would be the effect of that limitation, and why?*

A. (*a*) The limitations to A for life and to his eldest son for life are good; but the further limitation to the son of the eldest son in fee is void, because it infringes rule 3 (see page 115) for the creation of contingent remainders. (*b*) The limitation to A for life is good, and the remaining limitations are construed by the *cy-près* doctrine as giving an estate tail to A's eldest son. (See further *ante*, page 115.)

Q. If freehold hereditaments be limited to A in tail, and if A shall have no child who attains the age of 25 years to B in fee, is the limitation to B good? Give reasons.

A. This a good limitation, for it is a contingent remainder, and does not transgress the rules as to contingent remainders.

(Whitby v. Mitchell, 44 Ch. D., 85.) But, even if it might be considered as tending to perpetuity (see Frost v. Frost, 43 Ch. D., 246), yet it is perfectly good, being after an estate tail, for here, as the entail might be barred, the remoteness of the event is of no consequence.

Q. What is the effect of a limitation to A, a bachelor, for life, and after A's death to his eldest son for life, and after the son's death to A's eldest daughter then alive?

A. The second contingent remainder to the daughter is void, because A might have a son who would live more than 21 years after A's death, and thus the daughter who is to take may not be ascertained within the rule against perpetuities. (*Re* Frost, *ante*, page 115.)

Q. What restriction existed at Common Law with regard to the alienation of a contingent remainder? By what statute was this restriction removed?

A. At Law, it was regarded as only a possibility of an estate, and was, therefore, not alienable by grant; yet, when the person in whom the contingent remainder must vest was once ascertained, he could release it to a person having a vested interest in the land, or could devise it to anybody; but in Equity, any conveyance of it for value was enforced. By 8 & 9 Vict., c. 106, a contingent interest is made alienable by deed, whether the object of the limitation of such interest is or is not ascertained; and the Wills Act 1837 makes all contingent interests devisable. (Edward's Compendium, 3rd edition, 142.)

Q. What is meant by a vested estate subject to being divested?

A. An estate vested in any person, but liable to be overreached and brought to an end by means of an executory limitation, *e.g.*, where lands are given to A and his heirs to such uses as B shall appoint, and in default of and until appointment to the use of C and his heirs, here C has a vested estate in fee simple in possession, of which, however,

he may be divested (in all or in part) by B exercising his overriding power of appointment.

Q. What is the meaning of the word "vested" applied (a) *to remainders;* (b) *to legacies?* (c) *What is meant by "vested subject to be divested?"* (d) *What is the nature of the interest taken* (1) *by A's eldest son under a limitation of land contained in a deed to A for life, remainder to his son who shall first attain the age of* 21 *in fee simple; and* (2) *by B under a legacy given to trustees in trust for A during his life, with remainder for B an infant; but if B shall die under* 21, *then in trust for C?*

A. (*a*) It signifies the actual possession of an estate in the land, as distinguished from actual possession of the land itself. (*b*) It here means, "not subject to a condition precedent." (*c*) An estate vested in any person, but liable to be overreached and brought to an end by means of an executory limitation, *e.g.*, to A and his heirs to such uses as B shall appoint, and in default of, and until appointment, to the use of C and his heirs. (*d*) A's eldest son has a contingent remainder in fee simple, and if he (or any other son in his place) attains 21 before A's death, the remainder, of course, becomes vested; otherwise, it formerly would have failed as not being vested at the determination of the particular estate, but now it is preserved by the Contingent Remainders Act 1877, as such a limitation would be good as an executory interest. B has a vested interest on testator's death, subject to its being entirely divested in favour of C by the executory gift over in case B dies under 21.

Q. Explain the meaning of a contingency with a double aspect.

A. A *contingency with a double aspect* is the alternative limitation of two interests by way of contingent remainder, *e.g.*, a limitation to A for life, and, if A leave a son, to that son in fee, but, if A leave no son, to A's daughter in fee; and is valid despite the rule that there can be no remainder

limited after a fee simple, for the second contingent remainder is not limited after, but is in substitution for the former.

Q. A testator bequeathed a legacy to B, to be paid when he attained the age of 21 *years; a legacy to C, payable three years after his (the testator's death); a legacy to D, if he attained* 21; *a legacy to E, at the age of* 21; *a legacy to F when he attained* 21, *with a direction that interest at 5 per cent. on the last-mentioned legacy should in the meantime be applied for the benefit of F; and, lastly, a legacy to G at the death of the testator's wife; and made his wife residuary legatee. B, D, E, and F, respectively died under the age of* 21 *years; C died three months after the testator; and G died in the lifetime of the testator's widow. Which of the legatees took vested interests in their legacies, and which did not?*

A. The legacy to B vested at testator's death, for the time of payment only was postponed, the gift being a present one, and B's next-of-kin will get the legacy. C's legacy also vested and goes to his personal representative for the same reason. The legacies to D and E did not vest, but were given contingently on their respectively attaining 21; both legacies, therefore, pass to the testator's widow as residuary legatee. F's legacy is saved from the fate of those to D and E by the gift of interest until the contingency happens, which makes the legacy a vested one, and consequently it passes to F's legal personal representative in trust for his next-of-kin. G's legacy vested at testator's death, the time of payment only being postponed. (Hanson v. Graham, Indermaur's Conveyancing and Equity Cases.)

Q. A fund was bequeathed to A for life, and, after his decease to the children of B in equal shares. B had five children, three born in A's lifetime, and two after A's death; but one of the children born in A's lifetime died an infant before A's death. Who, upon A's death, would be entitled to the fund, and why?

A. The fund is divided equally amongst the three

children born in A's lifetime, the deceased child's share passing to his next-of-kin. One of the rules for construing testamentary gifts to children is that where a particular interest is carved out (here, A's life interest), with a gift over to the children of any person, such gift over embraces all the children who come into existence before the period of distribution (A's death). (See notes to Viner v. Francis in Indermaur's Conveyancing and Equity Cases.)

Q. State the rule in Shelley's Case. Do you know the reasons for the rule? Does it apply to wills as well as to deeds?

A. If a person by any conveyance takes an estate of freehold, and, by the same conveyance, an estate is limited (mediately or immediately) to his heirs in fee or in tail, the word "heirs" is a word of limitation and not of purchase, *i.e.*, it marks out the estate taken by the person himself and gives nothing directly to the heirs—*e.g.*, limitation to A for life with remainder to the heirs of his body, A takes an estate tail. The reasons for the rule appear to be three—(1) The two limitations virtually accomplished the same purposes as a gift of the inheritance to the ancestor, and therefore the law construed them as such a gift, so as to avoid the injury sustained by the claims of the lord, and the specialty creditors of the ancestor, being fraudulently evaded; (2) a desire to facilitate alienation, by vesting the inheritance in the ancestor instead of keeping it in abeyance till his death; (3) the carrying out of the primary intention that the ancestor should enjoy the estate for his life and, subject thereto, it should descend to his heirs, by sacrificing the secondary intention that the ancestor should have a life estate only, and that his heirs should take by purchase. (Smith's Compendium, 6th edition, 181.) The rule is applied to limitations in wills, except where its application would clearly have a

result contrary to the intention of the testator expressed in the will.*

Q. What difference is there between a limitation to A for life, with remainder to the heirs male of his body, and a limitation to A for life with remainder to his first and other sons successively, and the heirs male of their respective bodies?

A. In the first case A takes an estate tail male under the rule in Shelley's Case; in the second case only a life estate, and his son an estate tail male.

Q. What estates are taken under the following limitations of real estate (a) *in a deed,* (b) *in a will?*—(1) *To A for life, with remainder to B for life, with remainder to the heirs of A;* (2) *To A and his issue;* (3) *To A for life, with remainder to his son who shall first attain twenty-one, in fee simple.*

A. (1) Under both the deed and the will, by the rule in Shelley's Case, A takes an estate in fee simple in possession, subject to B's vested life estate, which will take effect in possession as soon as A dies. (2) In a deed, A gets a life estate only, because the technical words required to create a fee simple or a fee tail are not employed; but under a will, by the rule in Wild's Case, if A had no issue at the time of the devise, A gets an estate tail, while if A had issue at the time, he and his children are joint tenants in fee. (3) A gets a life estate with contingent remainder to the son in fee, both under a deed and a will.

Q. Freehold land is limited, by settlement or will, to A for life, with remainder to B his wife, for life, with remainder to the heirs of the body of A. What estate does A take? Would it have made any difference if the remainder, after the deaths of A and B, had been limited to trustees in trust for the heirs of the body of A? What is the leading case on the subject?

* By analogy to the rule in Shelley's Case (which applies to realty only), if personalty is given to trustees (by deed or will) in trust for A for life, and after A's death in trust for his executors, administrators, and assigns, A is the absolute owner. (Williams' Personalty, 14th edition, 345, 346.)

for B's children is void, because it might transgress the rule against perpetuities. (*Re* Frost, 43 Ch. D., 243.)

Q. A testator, who died in 1837, *directed his trustees, out of the income of his real and personal estate, to pay an annuity to his wife during her life, and to accumulate the rest of the income during her life, and at her death to pay the accumulations to such of his brothers as should then be living. His wife died in* 1870, *and two brothers of the testator were then living. How far, if at all, was the direction valid, and to whom did the surplus income from the death of the testator to that of the wife belong?*

A. The direction is good for twenty-one years after the testator's death, and the accumulations during that period will go to the two brothers living at the wife's death in 1870; but the direction is void after the twenty-one years, and the excess income from 1858 to 1870 goes to the persons entitled in the absence of any such direction, *i.e.*, so far as it comes from realty, to the residuary devisee under the will, or the heir-at-law, as the case may be, and, so far as it comes from personalty, to the residuary legatee or next-of-kin. (Weatherall v. Thornborough, 8 Ch. D., 261.)

Q. What restriction has been placed on executory limitations by the Conveyancing Act 1882, *sec.* 10?

A. That where, under any instrument coming into operation after 1882, any person is entitled to "*land*" in fee, or for years (absolute or determinable on life), or for life, with an executory limitation over on default or failure of his issue, such executory limitation shall not take effect if any issue capable of inheriting attains twenty-one. (See also next question, and *post*, page 161.)

Q. A testator, who died in 1883, *devised a freehold farm to A in fee simple; but if A should die without leaving issue living at his death, then over to persons who cannot now be ascertained. A, who has adult children, has sold the farm as absolute owner. The purchaser objects that the title is bad, A's*

estate being defeasible by his death without leaving issue. Is the objection sustainable, and is the date of the testator's death important?

A. The objection is not sustainable, because the executory limitation over in default of issue is in an instrument which came into operation after 1882, and A, on whose death without issue the property is to go over, actually has issue who has lived to attain twenty-one. (Conveyancing Act 1882, sec. 10.) If the testator had died before 1st January, 1883, the objection would have been fatal.

Q. (a) *What is a power?* (b) *How do the estates created under a power take effect with respect to the settlement which contains the power?*

A. (*a*) A power in its widest sense is an authority. With regard to freeholds, a power may be defined as the means of causing a use, with its accompanying estate, to spring into existence at the will of a given person. Powers may be Common Law powers, equitable powers, statutory powers, or powers operating under the Statute of Uses. There are also general powers and special powers; powers appendant, in gross, and collateral; and special powers may be either exclusive or non-exclusive. (*b*) As if such estates had been actually limited in the settlement itself.

Q. Give an example of a power (a) *operating at Law,* (b) *in Equity only,* (c) *under the Statute of Uses.* (d) *Under which class of power does the power of sale formally inserted in a mortgage fall?*

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A. (*a*) Power of attorney to collect a debt; or where a fee simple owner by will simply directs B to sell his land. (*b*) Any power of appointing the equitable interest in property given to an equitable life tenant, or a mortgagee's power of sale. (*c*) Grant of freeholds to A and his heirs to such uses as B shall by deed or will appoint, and, in default of and subject to such appointment, to the use of C and his heirs. (*d*) Equitable powers, for the mortgagee as legal owner could

A good example of Stat. power is power of Tenant for life to sell & dispose of the settled land

dispose of the property if he were not prevented by the rules of Equity, and the effect of the power is to partially remove the restraint imposed by Equity. A mortgagee selling in the absence of such a power could convey the legal estate, but the purchaser's rights would be subject to the mortgagor's equity of redemption; a sale under the power extinguishes the equity of redemption. (Goodeve's Realty, cap XI.; Elphinstone, 4th edition, 8.)

Q. You are instructed to draw a conveyance of freehold land to A in fee simple, and to insert in the conveyance provisions authorising B to convey the land to any other person without A's consent. What is the proper method of framing these provisions? If B conveys under these provisions can he deal with the legal estate? State reasons for your opinion.

A. Convey the freehold land (1) to such uses as B shall by deed or will appoint, and (2) subject thereto to the use of A in fee simple. The power is an authority to cause a use with its accompanying legal estate under the Statute of Uses to spring up at the pleasure of B; so that if B appoints to C, the legal estate for life at once vests in C for life, and A is pushed aside, because all estates created under powers take effect as if they had been inserted in the instrument creating the power instead of the power itself.

Q. Draw the operative part of a conveyance of freeholds to A in fee simple, with a provision enabling B to convey the land to any other person without A's consent. If B makes such a conveyance, can he deal with the legal estate? Give reasons for your opinion.

A. C as beneficial owner doth grant [the parcels] to D and his heirs to hold (1) to such uses as B shall by deed or will appoint, and (2) subject thereto to the use of A in fee simple. Yes, because B has authority to declare a use, and such use will at once be turned into legal estate by the Statute of Uses.

Q. Define a general and a limited power of appointment. How are appointments thereunder affected by the rule against perpetuities?

A. A general power is one that may be exercised in favour of anyone without restriction on the choice of the donee, and the rule against perpetuities applies as from the time when the power is exercised, *i.e.*, if exercised by deed from its execution, or if by will from the appointor's death. A special power is where the donee is restricted to exercise it in favour of specified persons or classes; and here, as the property is really tied up to those special objects from the creation of the power, the donee cannot create any estate by his appointment which could not have been created by the instrument conferring the power.

Q. Two funds of personalty are settled, one upon such trusts as A shall by will appoint, the other upon trust for A's children as he shall by will appoint. A bequeaths both funds to such of his children as shall attain 23 years. State the effect of the rule against perpetuities upon each of these appointments.

A. Under the first settlement, A has a general power, the rule against perpetuities is applied from its exercise, and as all his children must attain 23 within the period fixed by the rule, the appointment is good. But as to the second fund, A has a special power, the rule is applied from its creation, and, as the appointment may transgress the rule, it is void.

Q. What are the legal requisites for the valid creation of a power?

A. There are three requisites to the valid creation of a power, namely, (1) sufficient words to denote the intention; (2) an apt instrument; and (3) a proper object. (Sugden, 102.) No technical or express words are necessary to create a power, provided the intention be clear. A power may be created by a deed or will. In powers operating under the

Statute of Uses, the land must be conveyed to uses, and the power is only over the use, though by force of the statute the appointee takes the legal estate. The objects may be of any nature provided the rules of Law or Equity are not thereby transgressed. Care must therefore be taken in creating a power not to exceed by possibility the limits of the rule against perpetuities. (See Farwell on Powers.)

Q. Explain the distinction between powers and estates, and between powers collateral and those which relate to the land.

A. A power is a bare authority, which confers no ownership but may give an interest to the donee; whilst an estate is actual ownership of property, which, if accompanied by the legal seisin, entitles the owner to possession, and, if an equitable estate, entitles the owner to compel the legal holder to account for the profits. Powers collateral are powers, operating under the Statute of Uses, given to mere strangers who take no interest in the land; whilst powers relating to the land are, also, powers operating under the Statute, but are given to persons having an estate in the land, and are either appendant, that is, may be exercised during the continuance of that estate, or in gross, that is, can only be exercised after the determination of the estate, *e.g.*, power of jointuring a widow given to a tenant for life.

Q. State, giving examples, the rules governing the operation of excessive appointments under powers, and show in what cases the cy-près doctrine is applied to such appointments.

A. Where there is a complete execution of the power and something *ex abundanti cautelâ* added, which is improper, the execution is good and the excess only void; but where there is not a complete execution of the power, where the boundaries between the excess and the execution are not distinguishable, it will be bad. The leading case of Alexander v. Alexander (Indermaur's Conveyancing and Equity Cases) furnishes a good instance of an

excessive execution of a power. The *cy-près* doctrine is applied in some cases of appointment by will, so as to give effect, as nearly as may be, to the testator's intention; thus, it has been decided that where a power of appointing land, or money to be laid out in land, is given in favour of children, and the power is exercised by will in favour of a child, with remainder to the children of such child in tail—here the Court will give an estate tail to the child to whom a life estate only is given by will.

Q. Give a summary of the legislation of the present century with reference to illusory and exclusive appointments.

A. Originally an illusory appointment was good at Law though bad in Equity. By 1 Wm. 4, c. 46, an illusory appointment is valid in Equity as well as at Law. An exclusive appointment was always void as not being a proper exercise of a special power of appointment. Now, by the Powers of Appointment Act 1874 (37 & 38 Vict., c. 37), an exclusive appointment is good.

Q. Distinguish a Common Law power from a power operating under the Statute of Uses. Explain the operation of the power of sale formerly inserted in strict settlements.

A. A Common Law power is one recognised and given effect to by the Courts of law, *e.g.*, a power of attorney to receive a debt; or a direction in a will that the executors, to whom no estate is given in the land, should sell testator's real estate. A power which operates under the Statute of Uses is an authority to create a use in freehold land, which is at once changed into the legal estate by the Statute, *e.g.*, if land be limited to A and his heirs to such uses as B appoints, and subject thereto to the use of C in fee. The trustees frequently took no estate in the land, and their power of sale was an equitable power, and it was necessary to insert in the settlement a further power to convey to the purchaser, and this latter power operated as the declaration

of a use or by way of appointment. (Elphinstone, 4th edition, 9.)

Q. Give an analysis of the power of sale formerly inserted in strict settlements.

A. (1) The trustees are empowered to sell. (2) The trustees may revoke the uses of the settlement, and appoint to a purchaser. (3) Purchase-money to be paid to the trustees, and used to buy new land or to redeem incumbrances. (4) Newly-purchased land to be conveyed to the uses of the settlement. (5) Provision for interim investment of purchase-money. (Elphinstone, 4th edition, 392.)

Q. Explain the difference in operation of the exercise of a power of sale by (a) *a legal mortgagee,* (b) *a trustee under an ordinary settlement of real estate,* (c) *a tenant for life selling under the Settled Land Act* 1882.

A. (*a*) This power depends either on contract or on the provisions of the Conveyancing Act 1881, and the mortgagee is by the power able to convey the estate to the purchaser free from the rule of Equity that the mortgagor has an equity of redemption. (*b*) This depends on the settlement, and the trustee must keep strictly to its terms, and is only able under its powers to sell, and he conveys to the purchaser the estate vested in him by the settlement. (*c*) This depends on the statute, and is a purely statutory power, the tenant for life being able to pass a greater estate than he himself possesses.

Q. Enumerate and classify the different kinds of powers of sale.

A. (1) Common Law powers, which take effect apart from the Statute of Uses. Thus, a direction in a will that X, who takes no estate in lands, should have a power of sale over them, would be a Common Law power, to be carried out by bargain and sale in exercise of a Common Law authority. The power given by the Settled Land Act 1882, to a tenant for life to sell and convey, is an analogous power. All powers

over personalty come under this head, as the Statute of Uses has no application to personalty. (2) Equitable powers, *e.g.*, the power of sale in a mortgage deed. (3) Powers operating under 27 Hen. 8, c. 10, which may be either collateral or relating to the land (appendant or in gross).

Q. What is a power of attorney? How should a deed, executed under such a power, be signed? Is a deed so executed necessarily, or in any and what cases, invalidated by the previous death of the principal?

A. A power of attorney is an authority under seal given by one person to another to do a certain thing or to act generally for him, *e.g.*, where one goes abroad. A deed executed under such a power had formerly to be executed in the name of the giver of the power; but now the attorney may execute the deed in his own name (44 & 45 Vict., c. 41, sec. 46). Formerly, a deed executed under such a power would be of no effect if the principal were already dead or the power revoked; but if the power of attorney was created after 1882, and was (1) given for value and expressed to be irrevocable, or (2) in any case expressed to be irrevocable for a period not exceeding a year, which period had not expired at the time of execution, the death or revocation of the principal makes no difference to the power. (45 & 46 Vict., c. 39, secs. 8 and 9.)

Q. Explain the doctrine of "Cy-près," and state the classes of cases and properties to which it is applicable.

A. The principle of the doctrine is that where a testator has two objects, one primary or general, and the other secondary or particular, and the latter cannot take effect, the Court will carry out the general object *as near as may be* (*cy-près*) to the testator's intention according to the law. (Wharton's Law Lexicon.) It is applied (1) to real property *devised* to an unborn person for life with remainder to his eldest son and the heirs of his body, by giving an estate tail to such unborn person; (2) to charitable bequests, by

carrying out a *general* intention where the particular gift fails; and (3) to personal legacies accompanied by a condition precedent or subsequent, by holding that a substantial compliance with the condition is sufficient where a literal compliance is impossible from unavoidable circumstances without the fault of the legatee.

Q. Explain surrender and merger.

A. *A surrender* is the restoring or yielding up of an estate. It is usually applied to giving up a lease before the term expires, and its effect is to merge the estate of the surrenderor into that of the surrenderee. It may be (1) express, in which case it must be in writing, and if of more than a three years' term, by deed (29 Chas. 2, c. 3, sec. 3; 8 & 9 Vict., c. 106, sec. 3); or, (2) implied by act and operation of law, which is anything that amounts to an agreement by the tenant to abandon, and by the landlord to resume, possession of the demised premises, *e.g.*, delivery and acceptance of keys or creating a new tenancy. A surrender of copyholds is the giving up of the legal tenancy by an admitted tenant to the lord of the manor, either as a relinquishment of his estate, or as a means of conveying it to another. *Merger* is the annihilation by act of law of a particular estate in an expectant estate, consequent upon their meeting in the same person, in the same right, and without any intermediate estate (or where the estates so meeting are both freehold, subject only to an intervening term of years). An estate tail will not merge in the fee simple, because of the Statute *De Donis*; and any interest which is not an actual estate (*e.g.*, an *interesse termini*, or a contingent interest) does not merge in an immediate estate. Where tithe rent-charge, and the land out of which the same is payable, belong to the same owner, he is empowered by statute to merge the tithe rent-charge in the land by deed with consent of the Land Department of the Board of Agriculture. (6 & 7 Wm. 4, c. 71.)

8.—Uses and Trusts.

Q. Define a use.

A. A use was defined in Chudleigh's Case as a trust, not issuing out of land, but as a thing collateral, annexed in privity to the estate and to the person touching the land. Since 27 Henry 8, c. 10, it denotes the first use in a conveyance of freeholds, which gives the legal estate.

Q. State the effect of the first section of the Statute of Uses. Does it apply to leaseholds for years?

A. Where one person is seised to the use, confidence, or trust of another, the section (1) turns the use, confidence, or trust into an estate, *i.e.*, says the legal estate shall be in the *cestui que use*, and (2) vests the estate of the person seised in the *cestui que use* for the same estate that the latter had in the use. The section only applies to freeholds; there must be one seised to the use of another; the person seised must not have any active duty; and the statute only affects the first use. It enables a freeholder to create a term of years which requires no entry by the lessee to perfect it, and upon this depended the efficacy of the conveyance by lease and release under the statute; but it does not enable a lessee for years to transfer his leasehold interest or create a sub-lease. (Elphinstone, 4th edition, 7.)

Q. When was the Statute of Uses passed? What was its object, and what has been its effect in conveyancing? In what case is it necessary, and in what case is it unnecessary to limit a use in conveyance of freeholds?

A. In the reign of Henry 8 (27 Hen. 8, c. 10). Its object was to put an end to the practice of conveying land to uses. Its direct effect in conveyancing has substantially been only to add the words "to the use of" to conveyances; but, beyond this, it enables various limitations of the use, with its accompanying estate, to be made which could not be made directly of the estate at Common Law. It is necessary to limit a use where there is no consideration; or there

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is more than one person named, and it is desired that one shall take the legal estate, and another the equitable estate; also where, in a deed, limitations by way of executory interest are desired.

Q. Distinguish a use from a trust, and trace the history of the distinction.

A. By a use is now meant the first use declared, being one which the Statute of Uses converts into the legal estate; whilst by a trust is meant a second or subsequent use on which the statute does not operate, but which confers, nevertheless, an equitable or beneficial estate. After the Statute of Uses, it was held in Tyrrell's Case that there could not be a use upon a use; and upon this the Court of Chancery held that an equitable or beneficial estate was created by the subsequent use which is called a trust.

Q. A being seised in fee simple of Whiteacre conveys it for value to B, habendum to B for life to the use of C for life, with remainder to the use of D in fee simple. State what estates, if any, are taken by A, B, C and D.

A. As no words of limitation are used a life estate only is passed through B the grantee to uses. The uses expressly declared in favour of C and D are duly converted into legal estates by the Statute of Uses, but, as the *cestui que use* cannot take a larger estate than was passed through the grantee to uses, C has a legal and equitable life estate which cannot last longer than B's life and will cease on his own prior death, and D has a legal and equitable quasi fee simple in remainder which is contingent on C dying before B and will cease as soon as B dies. B has no legal or equitable estate, but the fact of his giving value implies a use in his favour, and possibly B has a contingent remainder for his own life conditional on C and D predeceasing him without D having alienated his interest and without D leaving an heir. A has the legal and equitable reversion in fee simple expectant on the death of B. (Elphinstone, 100.)

Q. What is meant by saying that a conveyance operates by transmutation of possession? Do these conveyances in fee simple operate in that manner?—(a) *feoffment;* (b) *a bargain and sale;* (c) *conveyance by a tenant for life under the powers of the Settled Land Act;* (d) *by trustees under the power of sale formerly inserted in a strict settlement?*

A. That the legal estate or seisin passes at Common Law or by the operation of some statute other than the Statute of Uses—in contradistinction to a conveyance which operates as the declaration of a use only, so that the grantee gets the legal estate by virtue of the Statute of Uses. In the former class, if uses are declared on the seisin of the purchaser, such uses give the legal estate; in the latter class, the uses merely give an equitable estate, as the Statute of Uses is already exhausted. (*a*) This operates by transmutation of possession. (*b*) This operates under the Statute of Uses. (*c*) Apparently this conveyance may operate either by transmutation of possession or as a declaration of uses; in practice, it is always framed to operate by transmutation of possession. (*d*) This operates as a declaration of a use, and not by way of transmutation of possession.

Q. A grants freeholds to B "to hold to B and his heirs." State what becomes of the legal estate when the conveyance is made (a) *for good,* (b) *for valuable,* (c) *without any, consideration.*

A. In case (*c*) there is a resulting use to the grantor, which gives him the legal estate under the Statute of Uses; but in case (*a*) and (*b*) the consideration implies a use in favour of B, who therefore becomes the legal owner.

Q. Distinguish the technical mode of operation of the following assurances:—"Lease," "release," "surrender," "bargain and sale," "grant."

A. *Lease* of land at Common Law is made by a grant of the land for the term of years intended to be created, followed by actual entry of the lessee, the grant merely

passing an *interessi termini;* but a lease of an interest lying in grant (*e.g.*, advowson, right of common) takes effect by virtue of the grant merely. *Release* is a deed conveying a further interest in land to a person already in possession, such further interest passing by the deed without further ceremony. *Surrender* is a conveyance of an estate for life or years in possession to one who has an immediate remainder or reversion in which the estate conveyed is capable of being merged; the deed expresses that the surrenderor yields up his interest to the surrenderee, and the estate surrendered merges at once without any actual delivery of possession. *Bargain and sale* is a contract to sell an estate accompanied by payment of the price; this gives rise to an implied use in the purchaser, and the Statute of Uses at once gives the purchaser the legal estate without entry; it must now be by deed enrolled under 27 Hen. 8, c. 16. *Grant* is a deed by the execution of which any interest in real property (except an estate in possession in a corporeal hereditament) can be passed at Common Law, and, since 8 & 9 Vict., c. 106, such exception may also be passed.

Q. In a conveyance on sale of freehold land the ordinary form of the habendum is "To hold the said premises unto the purchaser and his heirs to the use of the purchaser, his heirs and assigns for ever." Which of those words are, and which of them are not, essential, and why?

A. The words "to the use," &c., are not required, for the purchaser pays a valuable consideration and the preceding part of the habendum is all that is needed. If the conveyance had been voluntary, all the words given above are needed, otherwise there would be a resulting use to the grantor which would revest the legal estate in him.

Q. What were the objects and advantages of using the conveyances called a bargain and sale, and a lease and release?

A. A bargain and sale was used to convey freeholds without the inconvenience and publicity of a feoffment with

livery of seisin. A lease and release was used to avoid the necessity of inrolment under 27 Hen. 8, c. 16. A bargain and sale prior to 27 Hen. 8, c. 10, created a use enforced by a Court of Equity though disregarded by Common Law Courts; the statute turned this use into possession; 27 Hen. 8, c. 16, required a bargain and sale of freehold to be by deed, enrolled at Westminster within six months. But, as the last-named statute did not apply to a bargain and sale for a term of years, whilst the Statute of Uses did (if created by a freeholder), the practice was adopted of making a bargain and sale for a year, which gave the lessee the feudal possession without entry, and then executing a deed of release dated the following day, by which the entire fee simple was passed to the bargainee.

Q. Explain the operation of the common conveyance called lease and release. Did either of the deeds by which this conveyance was effected operate by transmutation of possession?

A. The lease operated under the Statute of Uses and the release at Common Law. The lease had to be made by the freeholder, and took the form of a bargain and sale for value for a year; this operated as a declaration of a use, but did not fall within the Statute of Inrolments, and the lessee immediately on the execution of the lease became seised in possession without actual entry under the Statute of Uses; and, being in possession, he could by the Common Law take a release of the reversion in fee. The lease (or bargain and sale for a year) operated under the Statute; the release operated by transmutation of possession.

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Q. Why was it the practice, before the Real Property Act 1845 *came into operation, to convey a freehold reversion in land by an assurance by which freeholds in possession might pass? Draw the habendum in a conveyance to a purchaser of a reversion to fee simple expectant on a life estate.*

A. Because, if the reversion had in fact become an estate in possession before the execution of the conveyance, it

would not pass by a deed of grant, which was the appropriate Common Law conveyance for incorporeal hereditaments; therefore in practice a lease and release was usually employed. To hold the said premises unto and to the use of A in fee simple, subject to the estate for life of B in the same premises. (Elphinstone, 4th edition, 115.)

Q. Explain and illustrate—"Even now a common purchase deed of a piece of freehold land cannot be explained without going back to the reign of Henry 8, *or an ordinary settlement of land without having recourse to the laws of Edward* 1."

A. (1) In a purchase deed the land is conveyed unto and *to the use of* the purchaser. The words in italics were rendered necessary by the Statute of Uses in voluntary conveyances to prevent a resulting use of the legal estate to the grantor; and, although the valuable consideration renders them unnecessary in the purchase deed, they are always inserted. The Statute of Uses does not really apply to such a limitation, as it only relates to cases where land is conveyed to X to the use of Y; and, where the conveyance is unto and to the use of X, X is said to be in by the Common Law. (2) In an ordinary settlement of land, uses are always inserted, which can only be explained by reference to the Statute of Uses; and estates tail are limited to the first and other sons of the marriage, and they can only be explained by reference to the Statute *De Donis* which created them.

Q. Explain the doctrine of Scintilla juris.

A. *Scintilla juris* was a doctrine by which it was contended that, where lands are conveyed to B and his heirs to the use of A and his heirs until some event (*e.g.*, a marriage) and then to the use of C and his heirs, a possibility of seisin remained in B until the event, sufficient to enable C's use to be transmuted into the legal estate when the event happened; it was abolished by 23 & 24 Vict., c. 38, sec. 7, enacting that every use limited by a conveyance shall take effect by force of the seisin originally vested in the grantee to uses, *i.e.*, B.

9.—Alienation Inter Vivos.

Q. Describe a feoffment and its necessary incidents. Has it any peculiar efficacy at the present day? If a feoffment be made to A and his heirs in trust for B and his heirs, what estates do A and B respectively take?

A. A feoffment was the Common Law conveyance used to pass a freehold estate in possession in a corporeal hereditament; it was perfected by livery of seisin (*i.e.*, delivery of the feudal possession), and this was either (1) livery in deed, which took place on the lands, and could be performed by a deputy, or (2) livery in law, which took place within sight of the land; writing was unnecessary until 29 Car. 2, c. 3, made it so by sec. 1 as to creation, and sec. 3 as to assignment, of estates in land; by 8 & 9 Vict., c. 106, it must be by deed after 1st October, 1845, except when made by an infant under the custom of gavelkind; the word "give" was the technical term used in enfeoffing another. The publicity of delivery made a feoffment operate by wrong where the owner in possession of an estate granted out a larger interest than he possessed, so as to dismiss the lawful owner until he re-asserted his estate by exercising his rights of entry; since 1845 no feoffment can operate by wrong, 8 & 9 Vict., c. 106. The word "give" in a feoffment implied a warranty of title; but, since 8 & 9 Vict., c. 106, this is no longer so. A feoffment may still be used, but has now no practical advantage. It is the basis on which modern deeds have been formed. By the Statute of Uses, 27 Hen. 8, c. 10, A takes nothing, but is a mere conduit pipe to pass an estate to B, who gets the fee.

Q. How far is it correct to say that a man cannot legally convey to himself?

A. At Common Law a man could not occupy the position of grantor and grantee, and thus two conveyances were needed—(1) A conveyance to a third person, and (2) a conveyance from such third person to the original grantor, or

to him and another; but, under the Statute of Uses, one conveyance only is needed, as the interposition of a grantee to uses enables the grantor to settle his own fee simple on himself for life or in tail, or to convey it to himself and another; and, since 1881, freehold land can be conveyed by a man to himself jointly with another without the interposition of a grantee to uses (44 & 45 Vict., c. 41, sec. 50.)

Q. Explain the different effects of executing a contract for sale in the case of real estate and personal chattels respectively.

A. As regards real estate, the legal ownership remains in the vendor until a proper deed of conveyance is executed; and, although *in Equity* the lands belong to the purchaser and the purchase-money to the vendor, *at Law* each party merely acquires the right to sue the other for damages on breach of the contract. But, as regards personal chattels, the legal ownership is transferred from the vendor to the purchaser without the necessity of anything further, provided the contract contains the legal requisites for a sale.

Q. State the different modes of alienation of personal chattels.

A. (1) By a mere gift accompanied by delivery—and the words of gift and the delivery may be contemporaneous, or either may precede the other; (2) by deed; (3) by sale; and (4) by will.

Q. What is meant by a delivery of deed? What is an escrow? A, by deed, duly executed in the presence of his solicitor, assigned his equitable interest in a fund comprised in his father's marriage settlement to B, but retained possession of the deed and destroyed it without either the trustees of the settlement or B having notice of the deed. Can B claim the benefit of the assignment on proving the delivery and contents of the deed?

A. Any words or signs showing an intention to deliver the document as a deed, *e.g.*, touching the seal and saying you

deliver it as your act and deed, or handing the document to the grantee; what is a sufficient delivery is a question of fact to be ascertained from all the surrounding circumstances. An escrow is a deed delivered to some person who is *not* a party to it to take effect on a specified event. If the assignment was voluntary, it was complete, and B can claim the benefit of it, for the destruction of a perfect deed does not vitiate it; if the assignment was for value, then B can only claim the benefit on giving the value. (Elphinstone, 4th edition, 47.)

Q. What is the use of "narrative" and "introductory" recitals? What is the effect of discrepancy between the recitals and the operative part of a deed? By an indenture made between A and B reciting that "B had agreed to lend £10,000 *to A on mortgage of Blackacre, payable with interest at the rate and on the day hereinafter mentioned": the operative parts of the deed consist of the usual covenants for payment of principal and interest, and of the conveyance of Blackacre to B in fee simple, "subject to redemption as hereinafter expressed," but the proviso for redemption is omitted. What interest does B take in Blackacre?*

A. *Narrative* recitals show the nature of the property that is to be dealt with by the deed; *introductory* recitals explain what is intended to be done by the deed. If both recitals and operative words are clear but inconsistent, the operative words govern; if one is ambiguous and the other clear, the one which is clear governs. B takes the fee simple as mortgagee subject to redemption. (Elphinstone, 4th edition, 60, 62.)

Q. Draw the recitals in a conveyance in fee simple to a purchaser by a mortgagor, with the concurrence of the mortgagee, who is to be paid off out of the purchase-money.

A. Whereas by an indenture of mortgage dated, &c., and expressed to be made between B of the one part and A of the other part in consideration of £1,000 paid by A to B, the

hereditaments hereinafter described and intended to be hereby conveyed were conveyed by B unto and to the use of A in fee simple by way of mortgage for securing the payment to A, his executors, administrators and assigns of £1,000 with interest as therein expressed. And whereas the said £1,000 still remains owing to A on the security aforesaid, but all interest has been paid up to the date hereof. And whereas B has agreed to sell to C the hereditaments hereby assured in fee simple in possession free from incumbrances for £1,800. And whereas it has been agreed that £1,000 shall be paid to A out of the said purchase-money, and that A shall join in these presents in manner hereinafter appearing.

Q. What is the object of the habendum? Draw the habendum in a conveyance of freeholds to a purchaser by mortgagee selling under the statutory power of sale?

A. To mark out the quantity of interest taken by the grantee. To hold the same unto and to the use of the purchaser in fee simple free from all equity of redemption or claims or demands under the mortgage. (Elphinstone, 4th edition, 97.)

Q. Are covenants for title now set forth in purchase deeds? Give your reasons.

A. They can be so set out; but it is the usual practice not to set them out, because they may be implied under Section 7 of the Conveyancing Act 1881, by expressing that the vendor conveys as "beneficial owner."

Q. What are the usual covenants in purchase deeds and mortgage deeds of freeholds, copyholds, and leaseholds, respectively? Is there any difference between such covenants in purchase deeds and those in mortgage deeds?

A. In a purchase deed of freeholds, the usual covenants are that the vendor has good right to convey, for quiet enjoyment, free from incumbrances, and for further assurance. In a mortgage of freeholds the same covenants are inserted, with others for payment of the mortgage money and interest. In a

deed of covenant to surrender copyholds on a sale, the usual covenants are by the vendor to surrender to the use of the purchaser, for good right to surrender, for quiet enjoyment, free from incumbrances, and for further assurance. In a similar deed on a mortgage, the usual covenants are to surrender to the use of the mortgagee conditionally, and the same four other covenants as on a sale, and covenants to pay the mortgage money and interest. In a purchase deed of leaseholds, the usual covenants are—(1) by the vendor, that the lease is valid, and the rent and covenants have been paid and performed up to date, for good right to assign, for quiet enjoyment during the term, free from incumbrances, and for further assurance; and (2) by the purchaser, to pay rent and perform covenants during the term, and to indemnify the vendor therefrom. In a mortgage deed of leaseholds by underlease, the usual covenants are by the mortgagor for right to demise, quiet enjoyment after default, free from incumbrances, for further assurance, to insure against fire, and to pay the rent and perform the covenants in the original lease and indemnify the mortgagee therefrom; if the mortgage is by deed of assignment, then the covenants are the same, except that the first covenant is for right to assign. The practical difference between covenants for title in a purchase deed and a mortgage deed is that in the latter the mortgagor covenants absolutely against all the world, whilst in the former the vendor only covenants for himself and those claiming through him and those through whom he claims since the last conveyance for value, not being a marriage settlement. (See Prideaux, 16th edition, Vol. I., 190-194.)

Q. Under Section. 7 of the Conveyancing Act 1881, *what covenants are implied by conveying "as beneficial owner," in a conveyance for valuable consideration of freeholds and leaseholds on a sale, and by way of mortgage respectively; and what covenants are implied by conveying "as settlor" in a conveyance by way of settlement?*

A. On a sale of freeholds, the same four qualified covenants for title stated in the preceding answer; and on a mortgage, the same four absolute covenants for title. On a sale of leaseholds, the same five qualified covenants for title by the vendor that are set out in the preceding answer; and on a mortgage, the same five absolute covenants, and one to pay rent and perform covenants and indemnify the mortgagee, are implied. In the settlement, the only covenant implied is one (limited to the settlor and those claiming through him) for further assurance.

Q. A buys a freehold plot of building land from B and covenants that he will lay out £1,000 *in building on the land, and also that he will not use any building on the land for a manufactory. A sells the land to C. Can the covenants, or either of them, be enforced by B against C?*

A. By the rules of Common Law, the burden of a covenant relating to freehold land does not run with the land, and neither covenant could be enforced against C. But in Equity, the burden of a restrictive covenant runs with the land to anyone who takes with actual or constructive notice of it, so that an injunction can be obtained by B against C as regards the manufactory. (Tulk v. Moxhay, 2 Phil., 774.) And, since the Judicature Acts, the rule of Equity prevails.

Q. Give an analysis of a conveyance by a vendor seised in fee simple to a purchaser on sale, stating the names of the different parts of the conveyance.

A. Date; parties—(1) vendor, (2) purchaser; recitals, if any; witnessing part, consideration, receipt, operative words, vendor *as beneficial owner* hereby conveys to purchaser and his heirs; parcels; *habendum* and *tenendum*—unto and to the use of the purchaser in fee simple; *testimonium.*

Q. Draw a conveyance of land to a purchaser in fee simple. State what provisions (if any) were formerly inserted,

but are now usually omitted, in reliance on the Conveyancing and Law of Property Act 1881.

A. This Indenture made the day of Between A (vendor) of the one part and B (purchaser) of the other part Whereas A is seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described And whereas A has agreed to sell the same to B for £ Now this Indenture witnesseth that in pursuance of the said agreement and in consideration of £ now paid to A by B (the receipt whereof is hereby acknowledged) A as beneficial owner Doth hereby grant to B and his heirs All [parcels] To hold unto and to the use of B and his heirs. In witness, &c. The covenants for title are implied by the words "as beneficial owner," and the general words clause and estate clause are always implied.

Q. Sketch, in outline, a conveyance of freeholds on a sale by mortgagor and mortgagee.

A. Date; parties—(1) mortgagee, (2) mortgagor as vendor, (3) purchaser; recitals—(1) of mortgage, (2) of agreement for sale, (3) of sum now due on mortgage, and (4) agreement to pay off mortgage out of purchase-money; *testatum* that in consideration of £ paid to mortgagee by direction of mortgagor (receipt acknowledged) and of the balance of purchase-money paid to mortgagor (payment and receipt acknowledged) The mortgagee *as mortgagee by direction of the mortgagor as beneficial owner* conveys And the mortgagor *as beneficial owner* conveys to purchaser; parcels; *habendum* unto and to the use of the purchaser in fee simple freed and discharged from all principal monies and interest secured by and all claims and demands under the said recited mortgage; *testimonium.* (Prideaux, Vol. I.)

Q. Draw a conveyance of freeholds to a purchaser in fee simple by a mortgagee selling under his statutory power of sale.

A. This Indenture made the day of

Between A (mortgagee) of the one part, and C (purchaser) of the other part. Recital of mortgage from B to A, and of contract for sale. *Testatum.* In pursuance of recited contract, and in consideration of £ paid to A by C (receipt acknowledged) A, *as mortgagee*, in exercise of the power vested in him by virtue of the recited mortgage (or by virtue of the Conveyancing Act 1881) and of every other power vested in him in this behalf Doth grant to C [parcels] To hold unto and to the use of C and his heirs free from all right or equity of redemption, and free from all claims under the recited mortgage. *Testimonium.*

Q. Draw a conveyance on sale by a mortgagee of leaseholds under the statutory power of sale where the mortgage was made by assignment.

A. Date; Parties—(1) mortgagee as vendor under power of sale, (2) purchaser; Recitals—(1) of lease, (2) of mortgage, (3) of agreement by vendor to sell under statutory power. *Testatum*, that in consideration of £ paid to mortgagee as vendor (receipt acknowledged) the mortgagee assigns to the purchaser; Parcels; *Habendum* to purchaser for balance of term, subject to rent, covenants and conditions reserved in said lease. *Testimonium.*

Q. A dies seised in fee simple of Blackacre, and seised of a customary estate in fee simple of Whiteacre, which is copyhold. In what cases (if any) can his personal representatives convey Blackacre or Whiteacre to a purchaser?

A. (1) If A died before 1898—A's personal representatives *can* convey Blackacre, if A were a beneficial owner who had made a binding contract to sell the fee simple or a base fee or a determinable fee (Conveyancing Act 1881, sec. 4); and they *must* convey it, if A were a sole trustee or mortgagee who had contracted to sell it (*ibid.*, sec. 30). A's personal representative must convey Whiteacre, if A were a sole trustee or mortgagee who had contracted to sell it, but A had not been admitted tenant

on the court rolls (Copyhold Act 1894, sec. 88.) If A were a beneficial owner, and had charged his real estate by his will with payment of his debts, and had not devised such real estate to trustees for all his ownership or to a beneficiary in fee simple or fee tail, A's personal representatives can sell and convey to a purchaser under section 16 of 22 & 23 Vict. c., 35. (2) If A died after 1897—then Blackacre always must vest in the personal representatives, and they must convey it if they sell, or must concur in a sale by the devisee or heir, or must convey to the devisee or heir; but this does not apply to copyholds. See Part I. of Land Transfer Act 1897, *ante*, page, 49.

Q. Conveyance to the purchaser of freehold land contracted to be sold to him by a testator who died in 1883, *having by his will devised the land to his son John in fee, and appointed his wife his executrix; state who is entitled to the purchase-money and who can convey the estate.*

A. The contract for sale operates as a conversion, and the wife, as executrix, is entitled to the purchase-money. If the contract were binding on, and enforceable by, both vendor and purchaser at the death, the vendor was a trustee, and the legal estate passed to the widow, as executrix, by Section 30 of the Conveyancing Act 1881, and she only can convey; but if the contract were not so binding on, and enforceable by, both parties, then either the widow, as executrix, can convey under Section 4 of the Conveyancing Act 1881, or the devisee can convey. If the death had been after 1897, the executrix must always convey (see Land Transfer Act 1897, *ante*, page 49.)

Q. What is a vendor's lien for unpaid purchase-money, and how can it be enforced? How is receipt of the purchase-money usually acknowledged in a conveyance on sale?

A. The right of a vendor to have his unpaid purchase-money satisfied. *As regards goods*, this lien is a mere passive right to retain possession until the purchase-money is paid

(with a power of sale in certain cases under Section 48 of the Sale of Goods Act 1893), and is lost by parting with the possession to the purchaser. *As regards lands*, the lien is an equitable right to have the unpaid purchase-money with interest at 4 per cent.; it commences only when the vendor parts with possession of the lands to the purchaser; and it may be enforced as a constructive trust by an action in the Chancery Division. Where the purchase deed was executed before 1882, both by a receipt in the body of the deed, and a signed receipt indorsed on the back; but, since 1881, a receipt in the body of the deed is sufficient. (44 & 45 Vict., c. 41, sec. 54.)

Q. What restrictions are placed on constructive notice by the Conveyancing Act 1882, *sec.* 3?

A. In every purchase, lease, mortgage, or taking or dealing for valuable consideration, of or with real and personal property, debts, choses in action, and any right or interest in the nature of property, whether in possession or not, the "purchaser" is not to be prejudicially affected by notice of any instrument, fact, or thing, unless (1) it is within his own knowledge, or (2) would have been if he had made such inquiries and inspections as he reasonably ought to have made, or (3) in the same transaction with respect to which the question of notice arises, it has come to the knowledge of his counsel, solicitor, or other agent, as such, or (4) would have come to the knowledge of his solicitor or other agent, as such, if he had made such reasonable inquiries and inspections as he ought. But the "purchaser" is not relieved from any covenant, condition, proviso, or restriction in any instrument under which his title is derived; and he is not to be affected by notice where he would not have been affected if the section had not been enacted.

Q. What is "goodwill"? On a sale of it, what covenant should the buyer require from the seller, and why?

A. Goodwill is the benefit arising from connection and

reputation, or the probability of the old customers going to the new firm which has acquired the business. A covenant that the vendor will not set up business in the same line within so many miles of the old place of business. In the absence of this covenant, there is nothing to prevent the vendor setting up business next door to his old place of business, but he must not hold himself out as the old firm, nor must he solicit former customers. (Trego v. Hunt (1896), A. C., 7.)

Q. What are choses in action? and what practical difference has been made in the mode of assignment of them by the Judicature Act?

A. A chose in action is the right to bring an action to recover some debt or other thing resting in action. Formerly it was not assignable at law, and the plan adopted was to give the assignee a power of attorney to sue in the assignor's name. But now, under the Judicature Act 1873, sec. 25 (6), a legal chose in action may be assigned absolutely by writing under the hand of the assignor, notice in writing being given to the holder of the chose, and the assignee can then sue in his own name.

Q. Can (a) *a debt,* (b) *the right to recover damages in respect of a tort, be assigned in any and what manner*—(1) *at Common Law,* (2) *in Equity,* (3) *by Statute?*

A. (*a*) As a rule a debt was not assignable at Common Law, save negotiable instruments, annuities, and by the Crown. A debt was always assignable in Equity—the effect being that, if the debt were legal, the assignee could sue in the assignor's name, and, if the debt were equitable, the assignee could see in his own name. Various statutes permit the assignment of debts. The Judicature Act 1873 enables the assignee of a legal debt to sue in his own name if the assignment is absolute, in signed writing, and written notice is given to the debtor. (*b*) An assignment of a right to sue for tort is void on the ground of champerty unless the assignor is a trustee in bankruptcy. (Goodeve's Personalty, Ch., 9.)

Q. Where a bond debt is assigned for value absolutely, what inquiries ought to be made, and what notices ought to be given, for the safety of the purchaser?

A. The assignee of a chose in action (unless it is negociable) takes subject to equities; so the purchaser should, before completion, enquire from the original debtor whether he has notice of any assignment of, or charge on, the debt, and what is the state of accounts between him and the assignor; and if the debtor is told of the object of the enquiry his answer is, on the principle of estoppel, binding as between him and the assignee. Immediate notice of the assignment should be given to the original debtor, in order (1) to enable the assignee to sue the debtor in his own name, (2) to prevent the debtor paying the assignor, (3) to avoid the rule in Dearle v. Hall, that, as between several assignees of the same debt, he who gives notice first gets priority, and (4) if it be a trade debt, to take it out of the assignor's reputed ownership in bankruptcy. (Elphinstone, 4th edition, 187-190.)

Q. State briefly the principal rules regulating the transfer and mortgage of British ships.

A. The transfer is by bill of sale under the Merchant Shipping Act 1894, under seal, attested by one witness, accompanied by a declaration that the transferee is entitled to own a British ship, and registered at the port of registry. A mortgage is made in the same way; the mortgagee does not thereby become the owner, except so far as may be necessary to enforce his security; the mortgagee has a power to sell and to give receipts; the mortgagee is not affected by bankruptcy of the mortgagor; the mortgage ranks as from registration; and is discharged by the mortgage deed with a receipt indorsed being produced to the registrar who enters up satisfaction of it in the registry.

Q. A testator bequeathed a leasehold house to A, and appointed B his executor. A has agreed to sell the house to C, and B has agreed to sell it to D. Which contract can be

enforced, and what compensation, if any, can the disappointed purchaser obtain?

A. The fact of B having contracted to sell the house shows he had not assented to the legacy; A's title is, therefore, incomplete, and without that assent his contract to sell to C is valueless. As the house vests in the executor with all the other personalty for payment of debts, B's contract is a valid one, and D can enforce specific performance and have it enforced against him. If the executor had assented to the legacy, A would have had an absolute title, and his contract would have prevailed. The only remedy of the disappointed purchaser is by an action for damages, and the return of his deposit (if any).

Q. What are the chief attributes of mortis causâ donations?

A. The donation must be made under the impression of impending death; to take effect if the donor does not recover from his present sickness, and does not revoke the gift before his death; must be of personal property; evidenced by delivery of the thing given, or the means of obtaining possession of it, or the title to it, to the donee, or some one for him, by the donor, or some one for him, in his presence and by his direction. It is liable to the donor's debts, to estate duty, and to legacy duty. It may be of a bond, of bills or notes, or cheques payable to the order of the donor, though not indorsed, or of a policy of life assurance, etc.; but not of the donor's own cheque, unless cashed in his lifetime.

Q. What is necessary to enable the assignee of a policy of life assurance to sue on the policy in his own name?

A. The assignment must be duly stamped, and the assignee must have given notice to the assurance company. (30 & 31 Vict., c. 144; Stamp Act 1891, sec. 118.)

Q. Under what circumstances can a voluntary settlement be set aside by (a) *the creditor,* (b) *the trustee in bankruptcy of the settlor?*

A. (*a*) Under 13 Eliz., c. 5, where it can be deemed a

fraud upon the creditors. (*b*) Under the Bankruptcy Act 1883—if the settlor becomes bankrupt within two years, or if he becomes bankrupt after two, but within ten years, unless it can be proved that he was solvent at the time of making the settlement, without the aid of the settled property, and that the settlor's interest in the property passed to the trustees on execution of the settlement.

Q. Under a grant to A B, and under a devise to A B, what estate would A B take under the present law?

A. Under the grant, A B takes a life estate. Under the devise, A B now takes a fee simple or other the testator's whole interest, unless a contrary intention is expressed (1 Vict., c. 26, sec. 28); formerly, he would have taken a life estate only, unless testator had used words showing he intended to give a larger estate.

Q. State the law relating to the ownership of title-deeds where the lands are the subject of settlements and other conveyances.

A. The title deeds of land so far partake of the nature of realty that they pass with the land itself on its devolution. The owner of the legal estate is the person entitled to them, and this rule is equally applicable to real and to personal estate. If, therefore, the legal interest in the settled lands is vested in trustees in trust to pay the rents and profits to a tenant for life, and after his death in trust for other persons, the trustees are, as a general rule, entitled to the custody of the title deeds (Garner v. Hannyngton, 22 Beav., 630); but the *cestui que trust* has a right to inspect and take copies at any time. If the tenant for life has both the legal and equitable estates, he is entitled to the custody, unless he has been guilty of misconduct endangering the safety of the deeds, or unless there is a suit pending as to the property, and it is more convenient for the purposes of the suit that they should be in Court. The trustee of a bare legal estate will be compelled to deliver the deeds to his *cestui que trust*. (2 Prideaux,

16th edition, 219.) A purchaser is ordinarily entitled to such title deeds as his vendor possesses, unless they relate also to land retained by the vendor. On a sale in lots, the purchaser of the largest lot is entitled to deeds relating to all. A first mortgagee, legal or equitable, is entitled to the deeds. A lessee is entitled to possession of his lease.

10.—Wills.

Q. Explain the difference of the mode of operation of a will of a real, and a will of personal, estate.

A. If testator died before 1898—a will of real estate operates as a conveyance to the devisee, taking effect upon the death of the testator, so that the devisee's title accrues immediately upon the death of the testator and by force of the will alone; but, if testator died after 1897, the real estate always vests in the legal personal representative, and probate must be obtained in respect thereof, and it only passes to the devisee or heir on the assent of, or a conveyance by, such representative (see hereon Part I. of Land Transfer Act 1897, *ante*, page 49.) A will of personal estate simply operates in the first instance to pass deceased's personalty as from the moment of the death to his legal personal representative, to be applied by him in discharge of the debts of the deceased, and subject thereto in accordance with the directions of the will; and the will must be proved in common form or solemn form, and a legatee will only obtain his legacy with the executor's assent.

Q. Give a short account of the measures by which the right of testamentary alienation of real estate has been secured.

A. The feudal system did not permit real estate to be disposed of by will. When uses were introduced, a conveyance was made to the uses to be declared by a will, and a devise then made of the use, which devise the Court of Equity enforced. 27 Hen. 8, c. 10, by turning the use into the legal estate, for a time put an end to devises. By 32 Hen. 8, c. 1,

a will might be made of two-thirds of land in chivalry tenure, and all lands in socage tenure. 12 Chas. 2, c. 24, turned the first-named tenure into socage tenure. The Statute of Frauds prescribed signature and attestation. The Wills Act, 1 Vict., c. 26, governs all wills made since 1837.

Q. How must a will be executed and attested? What would be the result if (1) *an executor, or* (2) *a legatee under the will were one of three attesting witnesses?*

A. It must be signed, at the foot or end thereof, by the testator or by some one for him in his presence and by his direction; the signature must be made or acknowledged by the testator in the presence of two (or more) witnesses present at the same time; and the witnesses must attest and subscribe the will in the presence of the testator, but not necessarily in the presence of each other (1 Vict., c. 26, sec. 9). (1) The will and the appointment of the executor would both be valid (sec. 17). (2) The will would be good with the exception of the gift to the attesting legatee, which fails unless the legatee can satisfy the Probate Court he did not sign as a witness (*Re* Sharman, 1 P. & D., 661).

Q. Mention the changes introduced by the Wills Act 1837 *as regards the execution, attestation, and revocation of wills of real and personal estate.*

A. Before the Act, wills of realty had to be in writing, signed by the testator in the presence of three credible witnesses, but for wills of copyholds, chattels real and personalty, no formalities were prescribed by law; now, all wills must be signed at the foot or end thereof by the testator (or by some one for him in his presence and by his direction), and the signature must be made (or acknowledged) by the testator in the presence of two witnesses both present together, and each witness must sign in the testator's presence. Formerly, a gift to an attesting witness or the wife or husband of such witness made the whole will void; now, the witness simply loses that benefit. Now, cancella-

tion does not revoke a will, but marriage does with one exception (see *post*, page 157).

Q. What changes were made by the Wills Act of 1837 *with regard to the exercise of testamentary powers of appointment, and the property passing by a will?*

A. Formerly, in exercising a power of appointment by will, all the formalities as to execution and attestation prescribed by the instrument creating the power had to be strictly observed or the exercise was bad; but now, as regards execution and attestation, the power is deemed to be complied with, provided the will is executed like any other will under 1 Vict., c. 26. As regards the property, formerly a will of real estate spoke from its date, and only passed the specific property of which the testator was then possessed; but now, a will speaks from the testator's death, and passes all his property at the time of death, unless a contrary intention appears.

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Q. A gift of freehold lands, held by the giver in fee simple is made "unto and to the use of A" simply—(a) *In a will made before* 1835; (b) *in a will made in* 1839; (c) *in a deed. What would be the effect in each case? If the deed were executed after* 1881, *by what alternative form of words could the grantor's entire estate be made to pass to the grantee?*

A. (*a*) *Prima facie*, A takes a life estate only, unless some words can be found in the will to indicate a contrary intention. (*b*) A gets the fee simple, by Section 28 of the Wills Act 1837. (*c*) A gets a life estate, because there are no technical words to give him a fee simple or fee tail. A takes a fee simple under a deed since 1881 if the land be conveyed to the use of A and his heirs, or to the use of A in fee simple.

Q. State the several ways in which a will may be revoked, and how any obliteration, interlineation, or other alteration in a will after its execution must be made in order to be effectual.

A. A will is revoked—(1.) By marriage; except a will made in exercise of a power of appointment when the

property appointed, would not, in default of appointment, go to the heir, customary heir, or next-of-kin of the appointor. (2.) By burning, tearing, or otherwise destroying it, with the intention of revoking it. (3.) By any writing executed as a will, and declaring an intention to revoke it. (4.) By a subsequent will or codicil, so far as inconsistent. No obliteration, interlineation, or other alteration in a will made after its execution is valid unless such alteration, &c., is executed as a will. (1 Vict., c. 26, secs. 18, 20.)

Q. Distinguish "specific," "general," and "demonstrative" legacies. How is the doctrine of ademption affected by the distinction? If a testator makes a will, leaving to A a sum described as now "owing to me on mortgage from B," and afterwards the mortgage is paid off, and the money received by the testator and invested on another mortgage, is A's legacy gone?

A. *A specific legacy* is a bequest of a particular thing, or sum of money, or debt, belonging to the testator, as distinguished from all others of the same kind, *e.g.*, my diamond ring, or the thousand pounds owing to me by C. *A general legacy* is a bequest to be satisfied out of the general personal estate, *e.g.*, a diamond ring, or £1,000. *A demonstrative legacy* is a general legacy with a particular fund pointed out to satisfy it, *e.g.*, £1,000 out of my consols, five out of my flock of sheep; and, if the fund is non-existent, it ranks as a general legacy. A specific legacy alone is liable to ademption, *i.e.*, the legatee looses the particular thing if testator does not own it at his death; but general legacies and demonstrative legacies are not liable to ademption—except when given to a child and a subsequent portion is given by the parent during his life, which will be a satisfaction or ademption *pro tanto*. All legacies abate, if necessary, to pay debts, but general legacies abate first. The legacy to A is specific and adeemed, for there exists nothing at the death on which the will can operate. (1 White & Tudor, 821.)

Q. What is meant by "ademption"? In what different ways can it take place, and what alteration in the application of the doctrine resulted from the passing of the Wills Act 1837 (1 *Vict., c.* 26)?

A. Ademption usually means the failure of a specific devise or legacy because the testator does not own the particular thing given at the time of his death; but, by analogy to the ademption of a specific legacy, the equitable doctrine of satisfaction of portions is termed ademption when a parent makes a provision for a child by will, and subsequently during his lifetime makes a settlement upon that child, the idea being that money which would have passed under the will has been taken out of the will by reason of the subsequent settlement. The alteration made by the Wills Act 1837 was to annul the old rule that ademption took place if testator acquired an interest different from the one he possessed at the date of making his will in the subject of the devise or bequest. (Edwards' Compendium, 3rd edition, 406.)

Q. What is a vested legacy, a contingent legacy? Give an example of each.

A. A vested legacy is one which is not subject to a condition precedent, *e.g.*, £100 to A; £20 to B to be paid at 21. A contingent legacy is subject to a condition precedent, *e.g.*, £50 to X if he attains 21.

Q. What are the provisions of the Wills Act 1837 *with regard to lapses of devises and bequests? A, in* 1830, *made a will, and thereby (inter alia) left certain land to a charity, and the residue of his real estate to B. He died in* 1845. *Who became entitled to the land? What would be the effect if the will had been made in* 1840, *and the death occurred in* 1850? *And what if the will had been made and death had occurred in* 1892?

A. (1) That a devise of an estate tail shall not lapse if the devisee has heritable issue alive at testator's death;

(2) that a devise or bequest to a child (or other lineal descendant) of testator shall not lapse if he leaves issue alive at testator's death, but shall take effect as if he had died immediately after testator; (3) that lapsed or void devises and bequests go to the residuary devisee or legatee. In the first case, the devise to the charity was void by the Mortmain Act then in force, and that land went to the heir as under an intestacy, for, in wills prior to 1 Vict., c. 26, lapsed or void devises did not fall into the residue (see sec. 34); in the second case, the charitable devise was void, but under the Wills Act B takes the land; in the third case, the Mortmain Act 1891, says the charity shall take but the land must be sold within twelve months from testator's death.

Q. A testator seised in fee simple of land, by his will, dated after 1837, *devises it to his son X, who dies in his father's lifetime, leaving a son, Y, living at the testator's death. How will the land devolve on the testator's death?*

A. This being a devise to a child of testator, who leaves issue alive at testator's death, the Wills Act 1837 prevents a lapse, and says the devise shall take effect as if X had died immediately after the testator. Therefore, if X left a will, the land will pass under such will; but if X died intestate, the land will go to his heir-at-law, *i.e.*, the son Y. If testator died after 1897, the devisee or heir of X must get an assent or conveyance from testator's personal representative to perfect his title. (See Land Transfer Act 1897, *ante*, page 49.)

Q. Testator devises one freehold farm to each of his nephews A, B, and C, in tail, and the residue of his real estates to the three nephews as tenants in common in fee. A died in testator's lifetime, leaving sons and daughters living at testator's death. To whom, and in what shares, do the farms and residuary real estate pass at testator's death?

A. A's farm goes to his eldest son as tenant in tail by descent, because of 1 Vict., c. 26, sec. 32; B is tenant in tail of his farm by purchase; so is C. B and C take two

undivided third parts of the residue as tenants in common in fee; but A's undivided third part lapses, he not being a child or other issue of the testator. And as A's third is part of the residue, there is an intestacy as to it, and it goes to the testator's heir-at-law.

Q. (a) *Define a class.* (b) *Where a legacy is given to a class in remainder expectant on a life interest, how are the members of the class who take ascertained?* (c) *A by his will gives a legacy to trustees in trust to invest and to pay the income to his widow during her life, and on her death to divide the capital in equal shares among his grandchildren, as tenants in common. At the date of the will A had two grandchildren, B and C. B died before A; three grandchildren, E, F and G, were born after A's death; during the widow's lifetime, E died; other grandchildren, H and K, were born after the widow's death. Who are the persons entitled to share in the legacy?*

A. (*a*) A number of persons with a common description—*e.g.*, "my sons," or "the children of X." (*b*) The legacy vests in the members of the class living at testator's death, subject to letting in all other members who come into existence before the period of distribution (death of the life tenant), the principle being to ascertain the class at the time of distribution. (*c*) It will go in fourths to C, F, G, and the personal representatives of E. (Elphinstone, 4th edition, 447-449.)

Q. What change did the Wills Act 1837 *make in the ordinary interpretation of the words "die without issue" when occurring in a will?*

A. Prior to the Act, the words were construed to mean an indefinite failure of issue, and so gave—(*a*) In real property, an estate tail; (*b*) in personal property, absolute ownership. But, since the Act, the words in all cases mean a want or failure of issue at the death of the person on whose death without issue the property is to go over, unless as to real property a contrary intention appears in the will by reason of

such person having a prior estate tail, or of a preceding gift being, without implication by such words, a gift of an estate tail to such person or issue, or otherwise. (Sec. 29; see also Conveyancing Act 1882, sec. 10, *ante*, page 126.)

Q. Explain the difference between an executor and an administrator. Under what circumstances are the following forms of letters of administration respectively granted, viz., (a) *during minority;* (b) *during absence;* (c) *with a will annexed;* (d) *of unadministered goods; and* (e) *when, in the first two cases, does the administrator's office cease?*

A. An executor is the person named by the testator in his will to carry out his wishes; all the personalty vests in him immediately the testator dies (and so does the realty, if testator died after 1897, see *ante*, page 49); and he may do any acts of administration short of going into Court before he takes probate, which is a mere authentication of his title. An administrator is an official appointed by the Court of Probate to wind up the deceased's affairs, where there is no executor, or the executor declines to act, or dies intestate without completely winding up the estate; he has no authority but the letters of administration, and cannot act without them. (*a*) Where a sole executor or the next-of-kin is a minor. (*b*) Where the sole executor is out of the kingdom at the death, or goes to reside abroad after taking a grant and remains there for a year. (*c*) Where an executor dies before the testator, or renounces, or there is a will which does not appoint an executor. (*d*) Where an executor dies intestate, or an administrator dies, without having fully administered the estate. (*e*) When the minor attains his majority, and the absent one returns, respectively.

Q. If a creditor appoints his debtor his executor, what was the effect at Law, and in Equity, respectively?

A. At Law, this operated as an extinguishment of the debt, because the executor could not sue himself; but in Equity, the

executor was bound to account for the debt to the testator's estate. Since the Judicatre Act 1873 the Equity rule entirely prevails.

Q. State briefly the duties of an executor with respect to the administration of the testator's estate.

A. He must bury the deceased in a manner suitable to his estate; make an inventory of the personal property; prove the will and pay estate duty; collect and realize the personalty, bringing actions where necessary for that purpose; pay the debts in proper order; pay the legacies; pass the residuary account, and pay the legacy duty; and pay the residue to the residuary legatee, or, if none, to the next-of-kin. If there are no next-of-kin, he is personally entitled to the residue, unless the will evinces a contrary intention. If testator died after 1897, the real estate also vests in him and does not pass to the devisee or heir without an assent or conveyance from him. (*Ante*, page 49.)

Q. What acts of administration can an executor do before probate?

A. He may do all ordinary acts of administration short of going into Court—*e.g.*, make inventories, sell and assign the deceased's property, collect debts, pay debts and legacies, commence an action; but, if he has occasion to go into Court in the action, he must produce the probate, as that is his only evidence of his title to sue.

Q. In what cases can executors and testamentary trustees respectively sell or mortgage their testator's real estate for payment of his debts or legacies?

A. (*a*) Where testator died before 1898—(by 22 & 23 Vict., c. 35, secs. 14-17), if the testator has charged his real estate with payment of debts or legacies, (1) then if he has devised the same to trustees for his whole interest therein and has not made any express provision for raising such debts or legacies, the trustees may raise the same by sale or mortgage, notwithstanding the trusts actually

declared; but (2) if testator has not devised his real estate to trustees for all his interest therein, the executors for the time being may so sell or mortgage. But the Act does not extend to a devise to any one in fee or in tail or for testator's entire interest, charged with debts or legacies, nor does it affect the power of such devisee to sell or mortgage. (*b*) If testator died after 1898—then, by section 2 of the Land Transfer Act 1897, his personal representatives can sell or mortgage the realty as if it was a chattel real. (See *ante*, page 50.)

Q. Is an executor bound to plead the Statute of Limitations to a demand for the payment of a debt which is statute-barred, or may he pay it if he thinks fit? If the estate is being administered in the Chancery Division, is any, and what, other person competent to take the objection, although the executor may not have insisted upon it?

A. An executor may pay a debt proved to be justly due from his testator, although barred by the Statute of Limitations; but not where it is barred by any other statute (*Re* Rownson, Field v. White, 29 Ch. D., 358). If the estate is being administered in the Chancery Division, the plaintiff, or any person interested in the fund, may plead the Statute of Limitations against a claim set up by a creditor, although the executor refuse to take advantage of such plea. (Shewen v. Vanderhorst, 1 Russ & M., 347; 2 Russ & M., 75; Williams on Executors, 1810, 1811.)

Q. Testator appointed A and B his executors. In administering his estate it becomes necessary to (a) *sue a tenant of a freehold house for rent in arrear at testator's death;* (b) *sell and convey a leasehold house;* (c) *receive a debt due to testator;* (d) *assent to a legacy to A. State which of these acts can be done either by A or B solely, and which must be done by them jointly.*

A. Both A and B must join in the action; but as any one executor alone can perform all other ordinary acts of administration, either A or B solely, or the two jointly can

do any of the other acts specified. It may, however, be noticed that in cases coming within the Land Transfer Act 1897, one executor cannot alone dispose of his testator's freeholds without the leave of the Court (sec. 2).

Q. (a) *In the absence of any express direction upon the subject, from what period, and at what rate, do legacies carry interest?* (b) *If a legacy is left by a parent, or person in loco parentis, to an infant, from what period would the legatee be entitled to interest, and why?* (c) *If a legacy is given to an infant, or to a person beyond the seas, in what way can the executor obtain a proper discharge for it?*

A. (*a*) From a year after the death of the testator, at 4 per cent.; but interest runs from the death, if the legacy is to a child, or is charged on land, or is in satisfaction of an interest-bearing debt, or is specific. (*b*) From the death unless some other fund is given for maintenance, because the legacy is presumed to be given for maintenance. (*c*) By paying it into Court under the Trustee Act 1893.

Q. A widower bequeathed his residuary personal estate equally amongst his six named children, of whom A and B subsequently died in his lifetime. A died a widower, and intestate, leaving two children, who survived testator. B died a bachelor, and testate. To whom, and in what shares, does the residuary personal estate belong?

A. The residuary bequest creates a tenancy in common; the four surviving children, therefore, each take one-sixth of the residue; A's share does not lapse (1 Vict., c. 26, sec. 33), but passes to his two children in equal shares; but B's share does lapse, and is divided amongst testator's next-of-kin—viz., into five parts, one to each of the four surviving children, and the other to the two children of A *per stirpes*.

Q. A, by will, gives a legacy of £1,000 "*to each of my children C, D, and E,*" *and gives the residue of his personal estate to* "*my children.*" *At the date of his will he had four children, C, D, E, and F; one child, G, was born*

afterwards. C dies in A's lifetime leaving a child H who survives A; D dies in A's lifetime without issue. After payment of A's funeral and testamentary expenses, his debts and the death duties, his net personal estate amounted to £8,000. *How is it divisible?*

A. H gets £1,000, because C was a lineal descendant of A and left issue surviving A. The legacy to D lapses and falls into the residue. E gets his £1,000. The residue of £6,000 is equally divided between E, F, and G; because the residue was given to a class, and only those members of the class can take who were alive at the death of the testator, which in this case is the period of distribution.

Q. A testator who died in 1835 *devised Blackacre to A and his heirs, and the residue of his real estate to B and his heirs. A died intestate in the testator's lifetime. At the testator's death Blackacre was claimed by B, by A's heir, and by the testator's heir. Who was entitled to it? Would it have been different if the will had been made in* 1840?

A. Where the testator died in 1835 his heir-at-law was entitled; because the devise to A lapsed, and a residuary devise did not then pass lapsed and void devises as it does now by the Wills Act 1837. But if the testator died in 1840, the devise to A lapsed, and under the Wills Act 1837 (1 Vict., c. 26, sec. 24), the residuary devisee B would take, unless A were a child or other issue of testator and left issue living at testator's death, when A's residuary devisee, or, if none, his heir, would take by sec. 33 of the same Act.

Q. What are the provisions of the Wills Act 1837 (1 *Vict., c.* 26), *with respect to the extent and duration of estates devised to trustees?*

A. Where it is not specified what estate trustees are to take, they do not now (as formerly) merely take such an estate as is necessary for the purposes of their trust, but, under secs. 30 and 31 of the Act, they in all cases take either an estate determinable on the life of a person

taking a beneficial life interest in the property, or if the trust may endure beyond such life then they take the fee simple.

Q. A testator gave all his property to trustees upon trust for his daughter, subject to a condition that she would forfeit it in case she married without their consent. This property consisted of real and personal estates, and money charged on land. The daughter married without the consent of the trustees. What was the effect of the marriage upon the property given by the will, and why?

A. As regards the real estate and the money charged on land, the daughter forfeits all her interest; but, as regards the personal estate, the condition is regarded as merely *in terrorem* and void unless there is a gift over, and as there is here no gift over, the daughter does not lose the personal estate.

Q. State the steps by which the real property of deceased persons has become liable for payment of their debts. State how creditors can enforce their rights against real estate.

A. In the time of Edward 1, real estate was liable in the hands of the heir for specialty debts, in which the heir was bound. If deceased devised his lands to trustees to pay debts, equity allowed specialty and simple contract debts to rank equally. 3 Wm. & Mary, c. 14, first enabled specialty debts, in which the heir was bound, to be enforced against devisees. In 1807, the lands of dead traders were made liable for simple contract debts. In 1833, by 3 & 4 Wm. 4, c. 104, all lands were made assets for payment of all debts, but simple contract debts were to rank after specialty debts. In 1869, by 32 & 33 Vict., c. 46, simple contract creditors were allowed to rank *pari passu* with specialty creditors. If judgment has been obtained in the debtor's lifetime, by writ of *elegit;* otherwise, by administration proceedings in the Chancery Division, or, if the estate is insolvent, in the Bankruptcy Court under Section 125 of the Bankruptcy Act 1883.

Q. X, by his will, gave an annuity of £100 *to Y, and, after directing his executors to purchase same, went on to declare that Y should not be allowed to have the value of the said annuity in lieu thereof. Y nevertheless claims to be paid such value. Advise the executors as to the validity of the claim.*

A. Y's claim is perfectly valid, for it is a perpetual annuity and he is entitled to the *corpus*. This right of Y might have been prevented by the testator having given the annuity over to some one else, or directing that it should fall into residue on any alienation or attempt to anticipate. (Hayes & Jarman, 10th edition, 142.)

Q. Draw a short will giving a specific legacy to A, a general legacy to B, and the rest of the testator's property to C, and appointing C the executor. You need not set out the attestation or the testimonium.

A. This is the last will of me A B, of . . I bequeath my diamond ring to A, and I bequeath £100 to B, and the rest of my property I give to C, and I appoint C executor of this my will.

Q. Draft (shortly) a simple will, giving—(a) *A general legacy to son John;* (b) *a specific legacy to son William;* (c) *a demonstrative legacy to daughter Mary; and* (d) *the residue of real and personal estate to trustees in trust to sell and invest proceeds, and to pay income to widow Martha for life, with remainder for the three children equally or their issue* per stirpes. *Testator's wife and brother John to be executors and trustees.*

A. This is the last will and testament of me A B, of . . I direct my debts to be paid, And I bequeath £100 and a mourning ring to my son John, And I bequeath my diamond ring and my Great Western Railway stock to my son William, And I bequeath £3,000 out of my consols and 20 sheep out of my flock to my daughter Mary, And I give all the residue of my property, both real and personal, to my

dear wife Martha and my brother John upon trust to convert the same into money, and to stand possessed of the net proceeds in trust to invest and to pay the income thereof to my said wife for her life, and after her death upon trust for my three children, John, William and Mary, in equal shares, And in the event of any of my said three children dying before me, I direct that the share of the one so dying shall be held in trust for his or her issue (if any) who shall take their parent's share *per stirpes*, and in default of issue the share of the child so dying shall go over to such of my children as shall survive me or shall die before me leaving issue, And I appoint my said wife and brother trustees of this my will. (Prideaux, Vol. II.)

11.—Husband and Wife.—Settlements.

Q. Give an outline of a strict settlement of real property on marriage?

A. Date; Parties—(1) intended husband, (2) intended wife, (3) trustees; *Testatum;* in consideration of intended marriage the settlor conveys the real property to the trustees in fee simple—To use of settlor and his heirs until marriage, and afterwards—To use that the intended wife shall, during the joint lives of herself and her husband, receive a yearly rent-charge (payable half-yearly, the first payment to be made six calendar months after the marriage) as pin money for her separate use without power to anticipate; and subject thereto—To use of husband for life *sans* waste; with remainder—To use that the wife surviving her husband shall receive a jointure rent-charge for life commencing from the death, and payable half-yearly; and subject thereto—To use of trustees for 1,000 years to raise portions for younger children; and subject thereto to use of first and other sons of the marriage in tail male in succession, according to seniority; with remainder—To use of the daughters as tenants in common in tail, with cross-remainders amongst

them; with remainder—To use of settlor in fee simple. There should be clauses—(1) Fixing amount of portions and giving husband power of appointment with a hotchpot clause; (2) declaring trusts of portion term; (3) advancement clause; (4) power for husband to jointure a future wife, and charge portions for children of future marriage; (5) naming trustees for Settled Land Acts and Conveyancing Act; (6) power for husband (and after his death for trustees) to mortgage for improvements; (7) husband to be the person to appoint new trustees; (8) any special clauses desired; (9) settlement to be void unless marriage takes place within 12 months. (Prideaux, Vol. II.)

Q. Sketch in outline a marriage settlement of £5000 *Consols belonging to the wife, upon usual trusts, omitting all clauses and powers sufficiently provided for by statute.*

A. Date; Parties—(1) intended husband, (2) intended wife, (3) trustees; Recitals—(1) of intended marriage, (2) of agreement for settlement, (3) of transfer of Consols to trustees; *Testatum*—Declaration that trustees should hold Consols (*a*) until marriage, in trust for wife, and (b) after marriage, upon the following trusts, *i.e.*, (1) Trusts to retain, or sell and invest, with power to vary investments; (2) Trust to pay income to wife for life, for her separate use without power of anticipation, with remainder to husband for life; (3) Trust in remainder as to *corpus* and income for children as husband and wife, or survivor, appoint, and, in default of appointment, equally—sons at 21, and daughters at 21 or marriage, with a hotchpot clause; (4) Trusts (on default of issue) for wife surviving coverture absolutely, but otherwise as wife by will appoints, and in default of appointment to her next-of-kin under the statutes excluding husband. Then come—Agreement to settle future acquired property on like trusts, if so intended; Investment Clause; Power to appoint new trustees to be vested in husband and wife and survivor; Solicitor trustee to charge costs; Settlement to be void unless marriage

within 12 months; *Testimonium* (Prideaux, Vol. II.) *If the settlement were of the husband's property,* he would have the first life interest, and the trust (4) on default of issue would simply be for him absolutely.

Q. State the substance of the provisions for the children and issue of the intended marriage, usually inserted in a marriage settlement of personalty. If you have omitted any clauses which were formerly usually inserted, give your reasons for having done so.

A. (1) Power for husband and wife and the survivor to appoint to children or remoter issue of the marriage—this need not be stated to be an exclusive power since 37 & 38 Vict., c. 37; (2) In default of appointment, trust for all the children, who being sons attain 21, and being daughters attain that age or marry, in equal shares; (3) The hotchpot clause; (4) Power of advancement. The maintenance clause can be safely omitted in reliance on Section 43 of the Conveyancing Act 1881. (Elphinstone, 4th edition, 336.)

Q. What is the object of adding a hotchpot clause to powers of appointment among children? Show how such a clause may operate favourably towards the representatives of a child dying before appointment.

A. To prevent a child to whom an appointment has been made taking any share in the unappointed funds without bringing the appointed share into account. Under such a clause, the representative of such child will share the unappointed fund with the children to whom no appointments have been made; whereas, in the absence of the clause, the children to whom appointments have been made will also be entitled to share in the unappointed funds.

Q. How can copyholds, leaseholds, and personal chattels be settled to accompany freeholds in strict settlement?

A. Copyholds should be surrendered to the use of trustees as joint tenants of a customary estate in fee simple upon

trusts; and leaseholds and personal chattels should be assigned to the trustees absolutely to be held upon trsuts and subject to powers and provisions—corresponding as nearly as law and circumstances permit with those relating to the freeholds. But, as regards leaseholds and chattels, there must be a provision that they shall not vest absolutely in a tenant in tail by purchase unless he or she attains 21.

Q. (a) *Can an infant, and, if so, at what age make a valid and binding settlement on marriage, and, if so, how?* (b) *A married man conveyed an estate to trustees upon trust for his wife and children, and afterwards agreed to sell the same estate for value to a purchaser with notice of the settlement. Can the purchaser insist upon having the estate, or is the settlement valid as against him?* (c) *A, upon his marriage, settled a part of his own property upon trust for himself until he should dispose of the same, or become bankrupt. He afterwards became bankrupt. Would such a settlement be binding upon his trustee in bankruptcy?*

A. (*a*) An infant not under 20, if a male, or 17, if a female, can make a binding settlement on his or her marriage, with the sanction of the Court of Chancery under the Infants Settlement Act 1855 (18 & 19 Vict., c. 43); but if such infant is a tenant in tail, and either bars the entail or exercises a power of appointment, he must attain 21 for the settlement to be good. If an infant makes a settlement without the sanction of the Court, he may avoid it on coming of age, but, if the infant does not avoid it within a reasonable time after coming of age, then he or she will be bound by it (Edwards v. Carter, 69 L. T., 153). (*b*) If the settlement was really a voluntary one, the settlement would formerly have been void as against the purchaser under 27 Eliz., c. 4, but this is no longer so since the Voluntary Conveyances Act 1893. (*c*) No; such a settlement will not be binding on the trustee. If, however, A acquired any property with his wife on the marriage, the settlement will be considered to be

made with her property, and be valid up to the value of the property so received. (Prideaux, Vol. II., 16th edition, 254.)

Q. Note the effect of marriage upon the wife's freeholds, leaseholds, choses in action, and choses in possession respectively.

A. *By the Common Law*—the husband became entitled to receive the rents and profits of the freeholds during the coverture, and, if he survived her, might have an estate by curtesy for his own life; he could deal with the leaseholds in any way except dispose of them by will, and, so far as he did not dispose of them *inter vivos*, they passed to the survivor; the choses in possession vested absolutely in him, and the choses in action vested absolutely in him, provided he reduced them into possession during the coverture, otherwise they passed to the survivor, but, if he survived, he took as administrator. *Equity* permitted property to be given to the separate use of a woman, in which event the husband could only take (1) what the wife chose to give him, and (2) curtesy out of undisposed of freeholds of inheritance, and (3) undisposed of chattels real as her administrator; it also permitted the restraint on anticipation, which prevented her giving him anything beyond the income as it fell due; it also gave the wife her equity (or right) to a settlement out of her choses in action, which the husband could only reduce into possession by the aid of a Court of Equity; and it set aside a secret conveyance or settlement by a woman pending her marriage as a fraud on marital rights, except in a few rare instances. *The Legislature*, by the Married Women's Property Act 1870 (33 & 34 Vict., c. 93) enacted that (1) the wages, earnings, and saving of every married woman should be her separate property; and (2) that all personalty acquired as next-of-kin, and money not exceeding £200 under a deed or will, and the rents and profits of freeholds and copyholds acquired by descent, should be separate property where the marriage was after the 9th August, 1870,

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and the property was acquired during coverture. Lastly, by the Married Women's Property Act 1882 (45 & 46 Vict., c. 75), it is enacted (1) that all real and personal property belonging to a woman married after 1882, or coming to her during the marriage, shall be her separate property; and (2) that where a woman was married before 1883, all property, " her title to which, whether vested or contingent and whether in possession, reversion, or remainder shall accrue " after 1882, shall be separate property. In construing the words in inverted commas, the Court of Appeal held in Reid v. Reid (55 L. J., Ch., 294), that where a reversionary interest was acquired before 1883 by a married woman, but it fell into possession after 1882, the Act does not make this separate property, as there can only be one accrual of title.

Q. A woman seised in fee simple of land, owning furniture in her possession, and absolutely entitled in equity to Consols standing in the names of trustees, married in 1880. *What interest did her husband take in her property? What interest would he have taken in it if he had married in* 1890 *?*

A. Under the 1880 marriage—the husband was entitled to receive the rents of the fee simple during the coverture, and, if he survived, might have an estate for his own life by curtesy; the furniture became his absolutely; and the husband was entitled to reduce the chose in action into his possession, and so make it absolutely his own, subject to the wife's equity to a settlement as he would be obliged to sue the trustees in a Court of Equity. Under the 1890 marriage—the husband gets no interest whatever in her property except (in the event of her dying intestate without having previously disposed of her property) curtesy out of the fee simple and the whole of her personalty as next-of-kin.

Q. A woman seised of land in fee simple marries. How could the land be conveyed to a purchaser in fee simple (a) *in* 1830, (b) *in* 1860, *and* (c) *in* 1890 *?*

A. (*a*) By a fine in which the husband and wife joined, and she was separately examined; (*b*) by a deed acknowledged by the wife under 3 & 4 Wm. 4, c. 74, to which the husband was a party; (*c*) by the wife executing a deed without the husband's concurrence.

Q. What power of testamentary disposition of real and personal property respectively had a married woman before 1st January, 1883, *and what additional power of testamentary disposition does she possess since that date?*

A. Before that date—a married woman could only make a will of real or personal estate settled to her separate use as of right; and a will of personalty, which was not separate property, with her husband's consent, which he might revoke at any time before probate. Since that date, she has also the added powers, (1) if married before 1883, of making a will of all property coming to her during the coverture after 1882, and, (2) if married after 1882, of willing all her property. (It was, however, held that a married woman's will would not pass property acquired by her after coverture.) (*Re* Price, Stafford v. Stafford, 28 Ch. D., 709); but this is no longer so. (Married Woman's Property Act 1893, sec. 3.)

Q. A woman, who married A in 1890, *died intestate in* 1896, *leaving A and the only child of the marriage, B, a daughter. At the time of her death she was the owner of the following property:*—(a) *Blackacre, of which she was seised in fee simple.* (b) *Greenacre, of which she was seised in tail male, with remainder to K in fee simple.* (c) *A leasehold house, held for the residue of a term of years.* (d) *Books and furniture.* (e) *Consols. Who becomes entitled to the property at her death? Is it necessary to take out administration to her?*

A. (*a*) The estate descends to the daughter, subject to the husband's life estate, he being tenant by curtsey. (*b*) The daughter cannot inherit, nor can the husband have curtsey, and the estate devolves on K. (*c*) The husband

takes by survivorship, and need not take out letters of administration. (*d*) The husband takes *jure mariti*, and need not take out letters of administration. (*e*) The husband is entitled on taking out letters of administration. (Elphinstone, 4th edition, 298.)

Q. How far is a provision that a life interest given to any person under a settlement shall cease on bankruptcy or alienation valid?

A. Unless there is a gift over, it is simply void. But, assuming there is a gift over, then (1) if the property settled comes from the life tenant, the gift over is good against his alienees, but void against the trustee under his bankruptcy; but (2) as regards property coming from any other person (*e.g.*, where such an interest is given to the husband in a settlement of the intended wife's fortune) the provision is altogether good; and (3) if a husband has received part of his wife's fortune on the marriage, and settled his own property with such a life interest for himself, the provision is good to the extent of the wife's fortune which he so received. (Prideaux, Vol. II., 16th edition, 254.)

Q. What are the requisites and incidents of dower and freebench?

A. *Dower* is a life estate which a widow takes in a portion (usually a third) of her husband's lands of inheritance. At Common Law, it attached the instant the husband became solely seised in possession, but could be barred by a conveyance to uses to bar dower, or jointure, or a fine. As regards marriages since 1833, its requisites under 3 & 4 Wm. 4, c. 105, are (1) marriage, (2) death of the husband, leaving some estate of inheritance (either legal or equitable) not disposed of by him, and without his having barred the dower by a declaration in any deed or his will. *Freebench* is dower out of copyholds; its requisites are (1) a custom in the particular manor allowing it, (2) death of the husband leaving some estate undisposed of by him out of which,

according to the custom, she may claim it; the Dower Act 1833 does not apply to freebench.

Q. Describe the nature and incidents of a tenancy by the curtsey.

A. It is a life estate which the husband takes in all his wife's lands of inheritance in possession, of which she was the legal or equitable owner in severalty or in common, provided (1) he survives her, (2) there was a legal marriage subsisting at her death, and (3) issue born alive capable of inheriting. It attaches to separate use property, unless the wife has disposed of it by deed or will. (Hope v. Hope, 61 L. J., Ch., 441.) As to gavelkind lands, it is independent of the birth of issue, but only extends to a moiety, and ceases on re-marriage. A tenant by curtesy (but not a tenant in dower) has all the powers of a tenant for life under the Settled Land Acts.

Q. By what methods can dower be barred? State the rule as to legacies in satisfaction of dower.

A. If the parties were married since 1st January, 1834, dower may be barred, under the Dower Act 1833, by a simple declaration contained in any deed or will, or by any disposition of the lands. If prior to that date, it can be barred by legal jointure, a fine, or uses to bar dower. The point as to a legacy in satisfaction of dower would practically only apply to persons married on or before 1st January, 1834; and, if the will contains provisions inconsistent with the right to dower, the legacy will satisfy it in the sense that the widow is put to her election and not allowed to claim both the dower and the legacy. If a husband married since 1833, dies intestate as to land, out of which his widow would be dowable, but makes a will of personalty giving her a legacy in lieu of dower, such a legacy has priority over other legacies (Greenwood v. Greenwood, 61 L. J., Ch., 558).

Q. State and explain the common uses to bar dower. Why is it now unnecessary to insert them in a conveyance?

A. Grant to A and his heirs to such uses as B should by deed or will appoint, and subject thereto to the use of B for life, and on determination of such estate by any means in B's lifetime to the use of a trustee and his heirs in trust for B during his natural life, with remainder to the use of B in fee simple. The first use gave B a full power of disposal without the wife's concurrence, for a power is not an estate, and dower only attached to estates; the third use gave a vested estate to the trustee, and thus prevented the second use merging in the fourth; thus B was never solely seised of an estate of inheritance in possession during the coverture, to which alone dower at Common Law could attach. They are now useless, because dower since 3 & 4 Wm. 4, c. 105, only attaches as against the heir-at-law claiming under the husband's intestacy where there is no declaration in a deed barring it.

Q. What are a wife's pin-money, jointure, and paraphernalia; and what arrears of pin-money are recoverable by her and her legal personal representative respectively?

A. *Pin-money* is a yearly allowance secured to the wife by ante-nuptial settlement for dress and personal expenses suitable to the position of the husband. The wife can recover one year's arrears, unless she has complained and been assured by her husband that she will have it ultimately, in which case she can recover all the arrears. The wife's representatives cannot (from the very nature of the property) recover any arrears. *Legal jointure* is a competent livelihood of freehold for the life of the wife at least, to take effect presently in possession or profit after the death of the husband; it was an effectual bar of dower; it had to be made to the wife directly and not to any one in trust for her, and in lieu of her whole dower, and before marriage. *Equitable jointure* is a provision out of freeholds lacking any of the above-mentioned particulars, or a provision out of personalty; and only put the wife to her

election between it and her dower. *Paraphernalia* comprise the wife's wearing apparel and ornaments and gifts of jewels, &c., from her husband, to which she is entitled, beyond her dower, provided the husband predeceases her without having disposed of them in his life. They are liable to the husband's debts, and must carefully be distinguished from separate estate. It is not, however, always easy to determine whether property is paraphernalia or separate estate, and the answer depends on the facts in every particular case. (Tasker v. Tasker, (1895) P., 1; 64 L. J., P., 36.)

12.—Incorporeal Hereditaments.

Q. Enumerate and classify the principal kinds of incorporeal hereditaments.

A. According to Blackstone, incorporeal hereditaments are chiefly of 10 sorts. 1. Advowsons. 2. Tithes. 3. Commons. 4. Ways. 5. Offices. 6. Dignities. 7. Franchises. 8. Corrodies or pensions. 9. Annuities. 10. Rents. They have been classified as Appendant, Appurtenant, and In gross.

Q. Mention the characteristics of commons (a) *appendant;* (b) *appurtenant;* (c) *in gross.*

A. *Common appendant* arose from necessity, and was the Common Law right of every free tenant of *arable* land to depasture on the lord's wastes all cattle needed for tillage and manurance of the land (*i.e.*, horses, cattle, and sheep, which are thence called commonable beasts); the number of beasts put on was not to exceed as many as the common would feed during the winter; as it is of common right it need not be prescribed for, and, on a sale of part of the lands in respect of which it arises, it can be apportioned; and it passes along with the lands in respect of which it arises. *Common appurtenant* is annexed to some corporeal hereditament, but is against common right because it depends on a special grant (either express or implied from long usage); it cannot be

apportioned, and fails altogether when it cannot be exercised in its integrity; it may be created at the present day; and it also passes along with the property in respect of which it is claimed. *Common in gross* is the right of the owner to a *profit à pendre* out of the lands of another, arising by express grant to the commoner, and not as appendant or appurtenant to any corporeal hereditament; it requires a deed for its transfer. (See Tyrringham's Case, Indermaur's Conveyancing and Equity Cases.)

Q. Explain the rule that rent-charges and rights of common appurtenant should be regarded as being "against common right." What consequences have been deduced from the rule with respect to hereditaments of these kinds?

A. They are not of common right, for they do not arise by implication of law only as did common appendant, but by express grant, or (as to common appurtenant) by prescription or custom; and, unlike common appendant, they may be created at the present day. Common appendant was extinguished by purchase of all lands over which the right existed; but rent-charges and commons appurtenant were regarded as entire and issuing out of every part of the land charged. Consequently, the purchase or release of any part of the lands subject to a rent-charge, or common appurtenant, destroyed the charge or common. By 17 & 18 Vict., c. 97, the rent-charge was made apportionable, and, by 22 & 23 Vict., c. 35, the release of a portion of the lands from the rent-charge no longer destroys the whole rent-charge.

Q. What are the principal methods by which rights of common may be extinguished?

I. 115 A. By express release; unity of seisin; or abandonment.

Q. What is an easement? State what is meant by an affirmative easement, and what is meant by a negative easement. Give an instance of each.

I. 115 A. An easement is a privilege without profit which the

owner of one tenement, which is called the dominant tenement, has over another, which is called the servient tenement, to compel the owner thereof—(1) to permit to be done, or (2) to refrain from doing, something on the servient tenement for the advantage of the dominant tenement. The former is called an affirmative easement, and the second a negative easement. An instance of the former would be where the owner of Whiteacre has a right-of-way over Blackacre, he can compel the owner of Blackacre to permit him to go along the way. An instance of the second would be where the owner of Whiteacre has ancient lights in a house on his estate, he can restrain the owner of Blackacre from doing any act on Blackacre which will deprive him of his accustomed light and air.

Q. Explain prescription and custom; continuous and discontinuous easements.

A. Prescription, which is personal, is for the most part applied to persons being made in the name of a certain person and his ancestors, or of those whose estate he held, or in bodies politic or corporate, and their predecessors; but a custom, which is local, is alleged in no person, but laid within some manor or other place. Continuous easements are those of which the enjoyment is, or may be, continual without the necessity of any actual interference by man, as a waterspout, or right to light and air, or drains; discontinuous easements are those the enjoyment of which can only be had by the interference of man, as rights-of-way, or a right to draw water.

Q. Under what circumstances does there arise a way of necessity? How is it limited, and by whom is it to be selected, where more than one way is available?

A. A way of necessity arises either where a man grants a piece of land in the middle of his field, or where the grantor conveys all the lands surrounding his field and retains the field, provided in neither case an express right-of-way is

granted or reserved. It is limited to such a right-of-way as will enable the owner of the close to enjoy it in the same condition as at the time of the grant, *e.g.*, if the close is arable or meadow, the owner may not put up houses and claim a right-of-way to them for his tenants (Corporation of London v. Riggs, 13 Ch. D., 798). The grantee is restricted to such one way as will be convenient for the reasonable enjoyment of the premises; but, subject to this rule, the grantor is probably justified in assigning such a way as he can best spare. (Woolrych on Ways, 34.)

Q. Distinguish easements from those rights which, though similar to them in other respects, are not annexed to the ownership of land.

A. The distinction is that easements are rights of property enjoyed by a person *as accessory* to his ownership of land, and for its convenience over the land of another, by reason whereof the latter is bound to permit some definite use (not involving participation in the soil or its produce) of his land, or to refrain from some particular use of it; whilst an easement in gross is a right similar in extent but not annexed to the ownership of land, and exists because of a licence to do on another person's land that which, without such licence, would be a trespass, and is not alienable, and may be determined at any time by the withdrawal of the licence. (Edwards Compendium, 3rd edition, 299.)

Q. Define the easement of watercourse, and explain the various methods by which it may be acquired.

A. The right which a man has to the benefit of the flow of water in a defined channel. It may be acquired by express grant, or implied grant, or prescription under 2 & 3 Wm. 4, c. 71, or statute. (Sury v. Pigot, Indermaur's Conveyancing and Equity Cases.)

Q. By what means may easements be extinguished?

A. They may be extinguished by express release, by Act of Parliament, by unity of seisin, or by abandonment.

As to abandonment, it is not necessary to show any definite period of non-user; it is not so much the duration of the cesser, as the nature of the act done by the grantee of the easement, or of the adverse act acquiesced in by him, and the intention thereby indicated, which are material. As to extinguishment by unity of seisin, this will not occur where the easement is one of necessity, or is some right arising *ex jure naturæ* (Sury v. Pigot, Indermaur's Conveyancing and Equity Cases).

Q. Explain what is meant by prescription. What change was made by the Prescription Act?

A. *Prescription* means the acquisition of a title to an incorporeal right by means of immemorial user, which implies a grant. The right can be claimed either as being exercised in gross by the claimant and his ancestors; or, as being exercised in a *que* estate, *i.e.*, as appendant or appurtenant to lands held by the claimant and his ancestors. Formerly a title by prescription could only be acquired by enjoyment time out of mind, *i.e.*, since the first day of the reign of Richard 1; then the judges established an artificial rule by which 20 years adverse and uninterrupted enjoyment of an incorporeal hereditament, uncontradicted and unexplained, was cogent evidence from which the jury should be conclusively directed to presume a grant or other lawful origin of the possession. The Prescription Act (2 & 3 Wm. 4, c. 71) enacted that if the right is claimed as appendant, or appurtenant, and not in gross rights to light are to be indefeasible after enjoyment without interruption for 20 years, unless enjoyed by consent in writing; and that rights-of-way and other easements (except light) are not to be defeated, after 20 years of such enjoyment, by merely showing the precise time when they began to be enjoyed, and after 40 years are to be indefeasible; and as to rights of common and other *profits à prendre* (except tithes, rent, and services) fixed the periods of 30 and 60

years. The time must be reckoned back from the date of action brought; and interruption must be acquiesced in for a year after notice, or it is of no avail.

Q. What interest has the owner of an advowson in the parsonage house and glebe lands? If he sells the advowson during a vacancy of the living, what result ensues?

A. As patron, he enjoys the perpetual right of presentation to the benefice; but he has no property or interest as such in the parsonage house and glebe lands. The advowson passes, with the exception of the right to present on that particular vacancy, which is considered too sacred a thing to be bought and sold, the sale of such a right being simony; the vendor accordingly presents whom he will, and, if he does not present within six months, the right lapses to the bishop, and in turn to the archbishop and, finally, the Crown.

Q. Define a rent-charge. How can it be created, and in what different ways can it be determined?

A. A rent-charge is a rent payable by the owner of land, otherwise than as a tenant, and expressly charged upon the land. It may be created by deed or by will. It may be determined—(1) by effluxion of time where granted for a limited period; (2) by determination of the estate on which it is charged; (3) by merger; (4) by release; (5) by redemption under section 45 of the Conveyancing Act 1881; and (6) by the Statute of Limitations. (Edwards' Compendium, 3rd edition, 276-282.)

Q. Mention any peculiarities of the law relating to tithes and tithe rent-charge.

A. Tithes constituted the provision for the ministers of the Church, consisting of a tenth part of the yearly increase of the soil, and, under the Tithe Commutation Acts, a rent-charge varying with the price of corn has now been substituted for tithes in kind. On the sale of land, tithe is a burden, the existence of which is presumed in the absence of agreement, but, since the dissolution of the monasteries, both the lands

of many laymen (being derived from the Crown) are discharged from tithes, and an existing right of tithe is often vested (by grant from the Crown) in lay persons who are styled lay-impropriators. Under the Tithe Commutation Acts, the person entitled to tithes is enabled by deed, to be approved by the Commissioners and confirmed under their seal, to merge the tithes or tithe rent-charge in the land out of or in respect of which they issue. Tithes in lay hands are capable of sale as a distinct incorporeal hereditament, and, on an open contract for the sale of tithes, a purchaser is entitled to call for the production of the original grant, and then to have the title deduced for a period of 40 years preceding the sale. They always descend by Common Law rules, and are not subject to any particular customs, *e.g.*, gavelkind. The Tithe Act 1891 now regulates the mode of enforcing payment of tithes.

Q. In what cases, and subject to what restrictions, can quit-rents and other perpetual charges be compulsorily redeemed?

A. Where there was, at the end of 1881, a quit rent, chief rent, rent-charge, or other annual sum issuing out of land—which is perpetual and is *not* tithe rent-charge, or a rent reserved on a sale or lease, or a rent payable under a building grant—any person interested in the land may, by signed writing, require the Land Department of the Board of Agriculture to assess under seal the sum for which the rent can be redeemed; and may next give one month's notice in writing to the person who is absolute owner of the rent, or can absolutely dispose thereof, or can give an absolute discharge for its capital value; and may then pay or tender the certified value to such person, and on proof thereof get a certificate from the Department that the land is freed. (Conveyancing Act 1881, sec. 45.)

Q. Describe the legal nature and incidents of personal annuities.

A. A personal annuity is an incorporeal chattel and

personal property; it consists of an annual payment not charged on real estate; it may be limited to the grantee, or to him and his heirs, or the heirs of his body; if given to the grantee and his heirs, it will descend to the heir on an intestacy, but will pass under a bequest of all the grantee's personalty; if given to the grantee and the heirs of his body, the grantee takes a fee simple conditional on his having issue, and not an estate tail, but on his death without having had issue the annuity ceases; if given to the grantee *for ever*, it will devolve on the grantee's legal personal representative and not on his heir.

13.—Copyholds.

Q. What is a manor? Who has seisin of the copyholds? To whom do the minerals under the copyholds belong? What services are always due from the copyholders? How are copyholds conveyed?

A. A manor is an aggregate of rights vested in the lord; it comprises demesne lands (occupied by the lord and his lessees and his customary tenants, and the wastes) and tenemental lands (occupied by at least two freehold tenants in fee simple) as regards which the lord has a seignory and is entitled to services; and the right to hold a Court Baron and a Court Leet, with incidental rights of escheat, fines, reliefs, heriots, &c. The seisin of the copyholds is in the lord (by Common Law and by custom); but a copyholder who has been admitted is sometimes said to be seised, as he is in possession of the customary rights. The lord is entitled to the minerals, but he may not enter on the land to work them without the consent of the tenant. The services due include fealty and suit of court, rent, reliefs, fines, heriots, &c. Copyholds are conveyed by surrender and admittance on payment of the proper fine.

Q. What was the origin of manors? Can they now be created? Mention the legal incidents of a manor.

A. They originated in the large tracts of land granted by the Conqueror to his followers; which, being much larger than the *tenant in capite* could make use of in person, were subinfudated or granted out by him to be held of him under certain services. They were all created prior to the Statute of *Quia Emptores* (18 Edw. 1, c. 1), which put an end to subinfudation. The grant of a "manor" will pass the demesne land, the freehold of lands held by copyhold or customary tenants, the pastures, wastes, commons, mines, minerals, quarries, woods, and the ground and soil thereof, fisheries, fealty, suit of court, rents, and generally all the services, Courts Baron with the fines and perquisites annexed thereto, Courts Leet with the like fines and perquisites, franchises and advowsons appendant.

Q. What are the necessary parts of a "manor"? What is a "reputed manor"? What is the meaning and user of "seizure quousque" by the lord of a manor?

A. These must be demesne lands, which include those occupied by the lord and by his lessees and by his customary tenants, and the waste; and tenemental lands, which are held of the lord by freehold tenants, and in regard to which the lord has a seignory and is entitled to services; there must be at least two tenants in fee simple who hold of the lord and constitute the Court Baron; the manor must date back prior to 18 Edw. 1, c. 1. A reputed manor is where there cease to be two freehold tenants. If a copyhold tenant dies, and no person comes forward to be admitted after proclamation at three successive Courts, the lord seizes the copyholds until the tenant comes forward to claim them. (Edwards' Compendium, 26, 27, 28, 33.)

Q. Explain the nature of the lord's right to a fine on the alienation of copyholds.

A. It is a right founded on the custom of manors. In some manors the fine was always fixed; in others it was anciently arbitrary. An arbitrary fine is limited now to

two years improved value of the land after deducting quit rents.

Q. Describe the different kinds of fines payable by custom in respect of copyhold estates.

A. Fines have been classified as payable (1) on the death of the lord, (2) on change of the tenant, and (3) for licences to empower the tenant to alienate, to demise for more than one year, and the like. Admittance fines are either certain or arbitrary, but the arbitrary fine must be reasonable and must not exceed two years' clear intrinsic value (except in the case of joint tenants and of remaindermen for lives) where the copyholder has a right to demand admission. (Elton on Copyholds, 128.)

Q. What difference is there between copyholds and customary freeholds? To whom, in each case, do the minerals belong, and what rights has the owner of getting them?

A. The former are always expressed to be held "at the will of the lord," whilst the latter were never expressed to be so held. In both cases, the freehold, and consequently the minerals, belong to the lord; but he may not enter on the surface of the lands to work them without the tenant's consent, although he may work them from a shaft sunk on adjoining land, taking care he does not injure the surface.

Q. How far can estates tail be created in copyhold, and how, when created, can they be barred? Explain the origin of the differences between freeholds and copyholds with regard to estates tail.

A. Only where there is a custom of the particular manor allowing estates tail; if there is no such custom, a surrender of copyholds to A and the heirs of his body gives him an estate analogous to the fee simple conditional created by a like grant of freeholds prior to the Statute *De Donis* (13 Edw. 1, c. 1). Estates tail in copyholds are barred—(1) if legal, by surrender; (2) if equitable, by surrender or deed. The consent of the protector (if any) is neces-

sary; and the transaction is enrolled, not in Chancery, but in the court rolls of the manor within six months (3 & 4 Wm. 4, c. 74). The distinction between copyholds and freeholds arises from the fact that the former are regulated by custom, which is their very life, and are not included in the Statute *De Donis*, which relates only to freeholds.

Q. How is the customary legal estate in copyholds conveyed? How are covenants for title and further assurances given or implied?

A. By surrender and admittance. This is preceded by a deed of covenant to surrender, and the covenantor being expressed to covenant as " beneficial owner " the covenants for title and for further assurance are implied by virtue of Section 7 (5) of the Conveyancing Act 1881. (Elphinstone, 4th edition, 121.)

Q. How is a mortgage of copyholds usually effected?

A. By conditional surrender. The mortgagee, to avoid payment of the fine, does not usually take admission unless he wishes to sell under his power of sale. When the mortgage is paid off no re-surrender is necessary, unless the mortgagee has been admitted; but a memorandum signed by the mortgagee acknowledging satisfaction of the mortgage is entered on the court rolls, and this vacates the conditional surrender.

Q. How is the customary legal interest in copyholds dealt with on a mortgage being transferred at a time when the mortgagor has not incumbered the equity of redemption?

A. If the mortgagor concurs, a fresh conditional surrender is made by him to the use of the transferree, and satisfaction of the former conditional surrender is entered up on the court rolls; if the mortgagor does not concur, the mortgagee must take admittance and then surrender to the use of the transferee, subject to the existing equity of redemption. (Elphinstone, 4th edition, 194.)

Q. Give a short history of the law as to devising copyholds.

A. Copyholds were not devisable at Common Law except under a special custom. The copyholder surrendered to the uses of his will, and the copyhold passed by the surrender and not by the will which merely declared the uses of the surrender. By 55 Geo. 3, c. 192, a will of copyholds is good without such surrender; and this is so now under the Wills Act 1837, which regulates all wills.

Q. In what different ways may the enfranchisement of copyhold lands be effected? Show the difference of their operation as regards the rights of the lord of the manor.

I. 21-23

A. *At Common Law*, voluntarily by the fee simple owner of the manor conveying a fee simple estate in the land or releasing his seignorial rights to the copyholder—and this absolutely extinguishes all the rights and incidents of copyhold tenure. *Under the Copyhold Act* 1894, either voluntarily or compulsorily through the award of the Board of Agriculture—but this does not affect any rights of common possessed by the copyholder or (unless expressly so agreed) the lord's right to minerals or any right of fair or market or in respect of game or fish or the lord's right of escheat. (Sec. 23.)

14.—Leaseholds, &c.

Q. Describe and distinguish the chief varieties of chattel interests in land.

A. They are those estates in land which are less than freehold, viz., (1) estates for years, (2) at will, and (3) at sufferance. The first is an estate for a fixed period of time, having a certain ending; the second is an estate determinable at the will of either party; and the third is the estate held by a person who has lawfully come into possession, and is now holding over after the termination of that tenancy. A mortgage, and a tenancy by elegit, are also chattel interests in land.

Q. A grants a lease for twenty-one years to B to commence immediately. Has B any estate in the land, and, if not, how

can he acquire one—(a) *Where A was seised in fee simple;* (b) *where A was possessed of a term of* 1,000 *years;* (c) *where A had no estate in the land, but granted the lease by virtue of a power operating under the Statute of Uses?*

A. In (*a*) and (*b*) A has no estate but merely an *interesse termini*, but this is changed into an estate for years as soon as A makes actual entry on the land; but in (*c*) A is deemed in immediate possession without entry for an estate for years.

Q. Can a lease for years be created or assigned by parol? Give an analysis of an assignment of a lease for years on sale. Set out the habendum at length.

A. It may be created by parol, if the term does not exceed three years and the rent is not less than two-thirds of the improved value (29 Chas. 2, c. 3, sec. 2); but it can only be assigned by deed (*Ibid.*, sec. 3; 8 & 9 Vict., c. 106, sec. 3). Date; Parties—(1) assignor, (2) assignee; Recitals (1) of lease, (2) agreement for sale; *Testatum*, consideration, receipt; A, as beneficial owner, assigns to B the parcels (as described in lease) To hold to B for all the residue now unexpired of the term created by the lease subject to the rent reserved by the lease and to the covenants and conditions therein contained and which henceforth ought on the part of the lessee to be observed and performed; Covenant by purchaser to pay rent and observe the covenants and conditions and indemnify A therefrom; *Testimonium.* (Prideaux, Vol. I., 16th Edition, 230.)

Q. A lease is drawn in the usual form. What are the remedies of the reversioner for non-payment of rent?

(1) He may distrain. (2) He may sue on the covenant for payment. (3) He may re-enter under the condition of re-entry contained in the lease.

Q. State the rules in Spencer's Case.

A. This case is the authority on covenants in leases running with the land. The rules may be put thus:—(1) Where the covenant extends to a thing *in esse* parcel of

the demise, the covenant runs with the land, and will bind the assigns though not mentioned. (2) Where the lessee covenants for himself and his assigns to do something upon the demised premises, though not *in esse*, the covenant runs with the land, and binds the assignee. (3) A covenant where the thing to be done is merely collateral, and does not concern the demised premises, never binds the assignee. (Indermaur's Common Law Cases.)

Q. In the lease of a house, A, the lessee, covenants—(a) *to keep the house in repair;* (b) *to build a new billiard-room. A sells and assigns the lease to B. The billiard-room is not built, and the house falls out of repair. Can the reversioner recover damages for breach of either of the covenants against either A or B? You may assume that all notices required before bringing the action have been given.*

A. A can be sued on both the covenants, by reason of the privity of contract. B can be sued on the covenant to repair, for covenants directly relating to the thing let always bind the assignee; but B cannot be sued on the covenant to erect the billiard-room, unless A covenanted "for himself and his assigns" to build it. (*Spencer's Case.*)

Q. A demises a house to B by deed in the usual form, containing covenants by B to pay the rent reserved by the lease, and not to allow any auction to be held on the premises. B assigns the lease to C by deed in the usual form. C declines to pay any rent, and turns the house into an auction mart. What remedies has A against B and C respectively?

A. A can sue B on the covenant to pay rent, and for damages and for an injunction on the other covenant—because of the privity of contract between them. There is privity of estate between lessor and assignee; therefore, A can take C's goods under distress for rent, and sue C for the rent, and sue C for damages and an injunction as to the other covenant. If the lease contains a right of re-entry for breach of covenant, A can re-enter; subject to the statutory

power of relief—as regards rent on payment within six months after entry, and, as regards the other covenant under section 14 of Conveyancing Act 1881, at any time before the actual re-entry.

Q. What covenants in a lease run with the land demised and bind the assigns (whether named in the covenants or not) of the lessee and lessor respectively?

A. A covenant is said to run with the land or with the reversion respectively when either the liability to perform it, or the right to take advantage of it, passes to the assignee of the land or reversion respectively. At Common Law, covenants ran with the land, but not with the reversion, so that the assignee of the lessee could sue, whilst the assignee of the lessor could not sue except under a power of attorney in the lessor's name. By 32 Hen. 8, c. 34, it was provided that the assignee of the reversion should have the like remedies against the lessee and his assigns as the lessor had, and *vice versâ*, that the lessee and his assigns should have the like remedies against the lessor's assignee as he had against the lessor. This statute was, however, held only to extend to covenants which touch and concern the thing demised, and not to collateral covenants. Thus, by the rules in Spencer's Case, (1) all implied covenants run with the land; also (2) covenants touching a thing in *esse*, parcel of the demise, although assignees are not mentioned; and (3) covenants to do some act upon the thing demised, if the assignee is mentioned. Now, by 44 & 45 Vict., c. 41, sec. 10, it is provided—as to leases made after 1881—that the rent reserved by, and the benefit of every covenant or provision contained in, the lease having reference to the subject-matter thereof, and on the lessee's part to be observed, and every condition of re-entry and other condition, shall go with the reversion expectant on the lease, even if severed, and shall be recovered, enforced, and taken advantage of by the person entitled to the income of the land leased; and that

(sec. 11) the obligation of the lessor's covenants is to run with the reversion, so far as the lessor had power to bind the reversioners, and may be taken advantage of and enforced against the owner for the time being of the reversion.*

Q. In a conveyance on sale by A to B of land in fee simple, B covenants for himself, his heirs and assigns, with A, not to allow beer to be sold on the land, and to erect on it, and always maintain, a boundary fence of a specified character. B sells and conveys the land to C in fee simple. C opens a beershop on the land, and pulls down the fence. What remedies, if any, has A under the covenants?

A. Covenants entered into by a purchaser of freeholds do not run with the land at Common Law, but in Equity the burden of a negative covenant can be enforced against a purchaser with notice, by injunction only (Tulk v. Moxhay, L. R., 2 Ch., 773). Consequently A can get an injunction against the beershop against C—unless C took without actual or constructive notice of the covenant. And, unless 20 years have barred A's action on the covenant, A can sue B for damages for breach of the two covenants.

Q. A, being seised in fee simple, granted a lease, dated the 1st January, 1880, to B for 99 years, commencing on the date of the lease, at an annual rent of £10. B immediately went into possession. A, on the 2nd January, 1880, granted a lease of the same property to C for 40 years, to commence on the 1st January, 1884, at an annual rent of £50. A, on the 1st January, 1890, granted a lease of the same property to D for 1,000 years, commencing on the date of the lease, at an annual rent of £60. Who is entitled from time to time to the rents?

A. The right to the rent follows the reversion (as to leases

* As regards covenants relating to the fee simple—the burden of such a covenant never runs with the land at law (Austerberry v. Corporation of Oldham, 29 Ch. D., 750) but in equity restrictive or negative covenants will be enforced against a purchaser with notice by an injunction (Tulk v. Moxhay, L. R., 2 Ch., 774); and the benefit will only run with the land if it is really connected with the enjoyment thereof (Austerberry v. Corporation of Oldham). (Elphinstone, 4th edition, 114.)

made before 1882 under 32 Henry 8, c. 34, and as to leases made since 1881 under sections 10, 11, 12 of the Conveyancing Act 1881). Consequently, B must pay his rent to A until 1st January, 1884; then C gets it for 40 years; then D gets it for the residue of B's lease. C will pay his rent to A for the six years from 1884 to 1890; and then to D for the residue of his 40 years. D pays his rent to A as from the commencement of his own lease. (Elphinstone, 4th edition, 114.)

Q. Distinguish between a tenancy at will and a tenancy at sufferance. To what notice to quit is a tenant from year to year entitled by Common Law and by Statute?

T 23-25.

A. A tenancy at will arises where premises are let for so long as both parties like, and reserving a compensation accruing *de die in diem*. This is the original nature of the tenancy. A tenancy at sufferance is where a tenant has had a fixed tenancy, and is holding over after the expiration of that tenancy. Such tenancies are both capable of being converted into yearly tenancies by the payment of rent referable to any aliquot part of a year. A yearly tenant is, at Common Law, entitled to half a year's notice to quit expiring at the end of the current year of the tenancy; but, as regards agricultural property and market gardens, a year's notice so expiring is now required under the provisions of the Agricultural Holdings Act 1883. (See Richardson v. Langridge and Notes in Indermaur's Conveyancing and Equity Cases.)

Q. A lease for 99 *years at* £60 *a year rent having expired, it is found that the tenant has not paid rent, or otherwise acknowledged the lessor's title, for the last* 15 *years. What are the reversioner's rights as to* (a) *the rent;* (b) *the land?*

A. (*a*) If the lessee is still in possession, he can distrain for the rent accrued due within the six years immediately preceding the distress (3 & 4 Wm. 4, c. 27, sec. 42); and the demise being by deed, he may sue the lessee for the rent

which accrued due within twenty years preceding the issue of the writ (3 & 4 Wm. 4, c. 42, sec. 3; Lewis v. Graham, 80 *Law Times* Newspaper, 66). (*b*) The reversioner may bring an action for recovery of the land at any time within twelve years after the lease expires, as the possession of the lessee does not become adverse until then (37 & 38 Vict., c. 57.)

Q. State the provisions of the Conveyancing Act 1881, *sec.* 14, *respecting restrictions on, and relief against, forfeiture of leases.*

A. A lessor cannot take advantage of a right of forfeiture reserved on breach of conditions of a lease, until he has first served on the lessee notice, specifying the breach complained of, and requiring the lessee to remedy the breach, if possible, and in any case requiring money compensation for the breach (see hereon Lock v. Pearce (1893), 2 Ch., 271); and the lessee has failed to comply with such notice for a reasonable time. Even then the lessee may apply to the Court for relief from forfeiture, and the Court may exercise its discretion, and impose terms. The section applies to leases, underleases, and grants at fee farm-rent, or at a rent upon condition; although the right of re-entry is reserved pursuant to the directions of a statute; and affects all leases notwithstanding stipulation otherwise. A lease *until* breach of condition takes effect for as long a term as it can legally exist, subject to the proviso for re-entry on such breach. The section does *not* extend to covenants or conditions against assigning or underletting; nor to a condition for forfeiture on bankruptcy of the lessee, or on execution against the lessee's interest*; nor (in a mining lease) to a covenant or condition for the lessor to have access to, or inspect accounts, or machinery, or the mine or workings—and against forfeiture for these no relief can be had. And

*As to bankruptcy and execution, see now Conveyancing Act 1892, sec. 2, *ante*, page 32.

the section in no way affects the law of forfeiture (or relief) for non-payment of rent.

Q. What is the effect of the assignment of a lease upon the rights and liabilities of the lessor, the lessee, and the assignee?

A. The lessor still keeps all his rights against the lessee, who cannot get rid of his liability without the lessor's consent; and also acquires rights of action against the assignee in respect of the rent and covenants which relate to the demised property during the period for which he remains assignee. The lessee, to protect himself, should take a covenant from the assignee to pay the rent and perform the covenants after assignment. The assignee acquires the right to sue the lessor upon the lessor's covenants in the lease.

Q. The purchaser of an underlease requires the seller to prove that all the covenants and provisions in both the underlease and the superior lease have been performed and observed down to the time of actual completion of the purchase. How shall the seller comply with the requisition?

A. By production of the receipt for the last payment for rent due under the underlease before the date of actual completion of the purchase. (Conveyancing Act 1881, sec. 2.)

Q. What effect has the disclaimer of a lease by the trustee in bankruptcy of the lessee upon the lessor, the lessee, and persons claiming under the lessee respectively?

A. It determines the rights, interests, and liabilities of the bankrupt and his property in respect of the lease as from the date of the disclaimer; but does not, except so far as is necessary for the release of the bankrupt and his property, and the trustee from liability, affect the rights or interests of others. Any person claiming under the lessee (*e.g.*, a mortgagee or underlessee) may apply to the Bankruptcy Court for an order vesting the disclaimed lease in him, subject, however, to the same liabilities and

obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed. Under the Bankruptcy Act 1890 (sec. 13), the Court may, however, make the person in whose favour the vesting order is made, subject only to the same liabilities as if the lease had been assigned to him at the date when the bankruptcy petition was filed.

Q. In a mortgage of leaseholds for years by demise the mortgagor declares that he will stand possessed of the nominal reversion in trust for the mortgagee, subject to the equity of redemption for the time being existing under the mortgage, and authorises the mortgagee to appoint new trustees of the nominal reversion. The mortgagor becomes bankrupt; his trustee in bankruptcy threatens to disclaim the nominal reversion. What should you advise the mortgagee to do?

A. I should advise the mortgagee to appoint a new trustee under his power, by deed which contains a declaration that the trust property shall vest in the appointee, and write to the trustee in bankruptcy that he had done this, and pointing out that the trust property did not pass under the bankruptcy. The trustee can then disclaim the equity of redemption; the lessor will lose all rights of action on the covenants in the lease, but can prove in the bankruptcy, and can distrain for rent, and can re-enter for breach of covenant.

Q. If a term of years be bequeathed to A for his life, and after his death to B, in whom does the whole term vest, and what interest has B therein, during A's lifetime?

A. The whole term of years is considered as vesting in the legatee for life, A, but on his decease the term is held to shift away from him, and to vest, by way of executory bequest, in the person next entitled, B. During A's life, B has technically no vested estate, but a mere possibility.

Q. How may a lease for years be surrendered? What difference does it make to an underlessee whether the lessee surrenders the lease, or the lessor re-enters on a forfeiture?

A. By a surrender in law, *i.e.*, the grant of a new lease either to the tenant or to a third person, with the tenant's consent, which operates in law as to the surrender of the existing one; or by a surrender in fact, where the lessee assigns his interest in the lease to the remainderman or reversioner, which must be by deed (8 & 9 Vict., c. 106), unless the lease is one which by law could have been created without writing, and is called a surrender, or bequeaths his interest to the remainderman or reversioner in his own right. If the lessee surrenders a lease, his underlessee is not prejudiced, but, by 4 Geo. 2, c. 28, and 8 & 9 Vict., c. 106, the reversioner next after the lessee becomes his landlord. If the lessee's term is put an end to by re-entry under the forfeiture clause, the underlessee's term (which is carved out of the lessee's interest) is gone also, unless the underlessee gets a vesting order under section 4 of the Conveyancing Act 1892, *ante*, p. 33.

Q. Explain the doctrine of estoppel with reference to leases for years.

A. If a lease is made by deed, the lessor is estopped from disputing the grant, and the lessee is estopped from denying the lessor's right to make it; and this although the lessor had not, at the time of making the lease, either the lands or the title. But, if the lessor during the lease becomes entitled to the lands, the lease at once takes effect for all purposes. If the lessor had, at the time of making the lease, any interest in the lands, that interest only will pass, and the lease will have no further effect by estoppel, although the lessor had professed to grant more than he really had.

Q. By what methods can a long term of years be enlarged into a fee simple, and what is the effect of such enlargement?

A. By a mere declaration to that effect in a deed executed by the beneficial or legal owner of the term, which vests in him a fee simple estate—subject to all the trusts,

powers, executory limitations over, rights, equities, and covenants, and provisions as to use and enjoyment, and all obligations to which the unconverted term was subject; and, if the term had been settled along with freeholds in strict settlement, the fee simple shall devolve exactly like those freeholds, unless some person had previously to the enlargement become absolute owner of the term; and the fee simple shall include minerals which have not previously been severed in right or in fact, or reserved by an Inclosure Act or award. (Conveyancing Act 1881, sec. 65.)

15.—Mortgages, &c.

Q. Distinguish the different kinds of security created by mortgages, liens, charges and pledges respectively.

A. *A mortgage* is a transfer of ownership from the mortgagor to the mortgagee, subject to a proviso for redemption and reconveyance on payment of the mortgage money with interest and costs; the legal ownership is in the mortgagee, and the beneficial ownership is in the mortgagor; if the money is not paid on the covenanted day, the mortgagee can enforce his security in a variety of active ways; the mortgagor usually retains possession until the mortgagee seeks to enforce his security. *A lien*—(*a*) at Common Law is a mere passive right to keep certain goods until claims against the owner are paid; it is general or special; it give active rights to an innkeeper under the Innkeepers Act 1878, to a solicitor under the Solicitors' Act 1860, and to unpaid sellers of goods under the Sale of Goods Act 1893 (sec. 48); it is neither a right of property in the thing nor of action to the thing; it is not barred by Statutes of Limitation, but is lost by parting with possession; (*b*) an equitable lien (*e.g.*, vendor of land for unpaid purchase-money) exists apart from possession, and can be enforced by action. A *charge* is an obligation imposed on property, and creates a trust which equity will enforce, *e.g.*, portions or

legacies charged on land. *A pledge* gives the possession of the article to the pledgee, together with qualified rights of property therein, and a right of sale on non-payment.

Q. Describe the methods of creating legal and equitable mortgages of leaseholds and copyholds respectively.

A. A legal mortgage of leaseholds may be by assignment or underlease : of copyholds by conditional surrender. An equitable mortgage is always by deposit of the muniments of title, with or without a memorandum, or by a mere memorandum of a charge. The distinction is that a legal mortgage transfers legal ownership to the mortgagee, with legal rights against the property ; while an equitable mortgage transfers no legal ownership, but simply gives the mortgagee rights enforceable in equity.

Q. Explain the operation of a proviso for redemption in a mortgage. What change in the language of this clause, as used in a mortgage in fee, has been adopted since 1882*?*

A. It operates to fix a date before which the mortgagee cannot foreclose. Formerly, the clause directed the reconveyance to be made by the mortgagee, his heirs, executors, administrators, or assigns, as the case may require. But, since 1881, the reconveyance is directed to be made by the mortgagee, his executors, administrators, or assigns.

Q. Give an analysis of a mortgage in fee simple.

A. Date; parties—(1) mortgagor, (2) mortgagee ; recitals (if any) ; first *testatum*, consideration, receipt, covenant to pay principal on day named with agreed interest, and to pay interest half-yearly ; second *testatum*, mortgagor *as beneficial owner* conveys, parcels, *habendum* to use of mortgagee in fee simple ; proviso for redemption ; *testimonium*. (Prideaux, Vol. I., 16th edition, 516.) Since the Conveyancing Act 1881 it is usual to omit powers to lease, and to sell, and to appoint a receiver, and covenants to insure and for title.

Q. Give an analysis of the express power of sale formerly

inserted in mortgages in fee simple. What was the reason for inserting the provisions for the protection of purchasers?

A. (1) Permission to sell without the mortgagor's consent was given to the person for the time being entitled to the mortgage debt; (2) person having legal estate (mortgagee's heir) to convey; (3) events on which power could be exercised; (4) purchaser to be protected if mortgagee exercised the power improperly; (5) power to give receipt for sale moneys; (6) how sale moneys to be applied; (7) anyone entitled to give receipt for mortgage debt can exercise power of sale. The reason for inserting the provisions referred to in the question was because it might sometimes be extremely difficult to produce to the purchaser satisfactory evidence that the events giving rise to the power of sale had happened; but the clause did not protect a purchaser who knew of an irregularity that could not have been waived. (Elphinstone, 4th edition, 163.)

Q. Describe the powers conferred on mortgagors and mortgagees respectively, by the Conveyancing Act 1881.

A. The mortgagor can—(1) compel the mortgagee to transfer the mortgage debt, if the mortgagee is not in possession and the right to redeem still exists, (2) inspect and copy the title deeds in mortgagee's hands, if mortgage made since 1881, (3) redeem without consolidation if any of the mortgages were made since 1881, unless otherwise agreed, (4) grant leases when in possession unless otherwise agreed, and (5) compel a sale if he sues for redemption or sale. (Secs. 15-18, 25.) The mortgagee can—(1) grant leases when in possession, (2) sell and convey and give valid receipts for sale monies, (3) insure, (4) appoint a receiver, and (5) cut ripe timber when in possession. (Secs. 18-24.)

Q. Discuss the nature, properties, and liabilities of an equity of redemption in real estate subject to a mortgage.

A. It is an equitable estate in the land; it means that the

mortgagor retains the right to redeem his property on payment of principal, interest and costs *after* the day named for redemption in the deed has gone by; it cannot be restricted by any condition in the mortgage deed, *e.g.*, a clause, that if the property is not redeemed within five years it cannot be redeemed, is void; it can be lost (1) by sale under mortgagee's powers, (2) by foreclosure, (3) by making a second mortgage without disclosing the first, or (4) by mortgagee being in possession for 12 years without any signed acknowledgment of the right to redeem; it is alienable; and devolves on intestacy like the land itself; but subject under the Real Estates Charges Acts to the mortgage debt. (Edwards' Compendium, 3rd edition, 223-227.)

Q. After sale of the equity of redemption by the mortgagor, can the mortgagee sue the purchaser or the mortgagor for the principal and interest due on the mortgage? Give reasons.

A. The mortgagee can still sue the mortgagor on his covenant. He cannot sue the purchaser of the equity of redemption, for there is no privity between him and such person. But the mortgagor is, in the absence of any contrary intention, entitled to be indemnified by the purchaser of the equity (Waring v. Ward, 7 Ves., 337), the principle being that there is an implied covenant on the part of the purchaser to this effect.

Q. What are the general powers and liabilities of a mortgagee in possession of land?

A. He can make building leases for 99 years and occupation leases for 21 years; he can cut and sell ripe timber; he must account for what he has received, or, but for his wilful default, might have received; he is chargeable with an occupation rent in respect of property in hand, and is liable for voluntary waste; he is allowed the cost of necessary repairs; he may charge actual expenses.

Q. Against what persons respectively is an unregistered bill of sale valid or invalid?

A. Bills of sale are governed by two Acts passed in 1878 and 1882 (41 & 42 Vict., c. 31, and 45 & 46 Vict., c. 43). The 1882 Act applies to all bills of sale given by way of security for money; and the 1878 Act to instruments given other than as security for money, *i.e.*, absolute bills of sale. The effect of non-registration of an absolute bill of sale under the 1878 Act is to render the instrument void (if the chattels are allowed to remain in the apparent possession of the grantor) as against execution creditors and trustees in bankruptcy, but not as between the parties; but, under the 1882 Act, a mortgage bill of sale is absolutely void if not duly registered.

Q. A proposes to borrow from B £1,000 *on the security of A's possessory life interest in Consols in Court in an administration action and his absolute reversion under a settlement, and (subject to his mother's life interest therein) in railway stocks standing in the names of trustees. What precautions, before and after the loan, should B take, and what risks would he run by neglecting them?*

A. Prior to the loan, B must satisfy himself as to the sufficiency of the proposed security, by ascertaining the nature and extent of A's life's interest in the property proposed to be mortgaged; that such interest is in possession; that there are no charging orders and stop orders on the funds in Court; that the reversion under the settlement is unincumbered; that the railway stock is intact, and there is no distringas upon it, and that the trustees have no notice of any charges. Otherwise B would run the risk of obtaining a fraudulent or insufficient security. After the advance, B should at once obtain a stop order on A's life interest in the fund in Court; give notice to the settlement trustees; register his security, if the settled lands are in a register county; put a distringas on the stock to prevent its being

dealt with except on notice to him; and serve the trustees of the stock with notice of his security. Otherwise he might be postponed, under the rule in Dearle v. Hall (3 Russ. 1), to a *bonâ fide* purchaser without notice, or a mortgagee who had perfected his security, or to successful fraudulent dealings with the property.

Q. Explain how the title of a mortgagor may become barred by the Statutes of Limitation.

A. It will become so barred, if the mortgagee enters into possession and holds for 12 years without giving any acknowledgment in writing of the mortgagor's right to redeem. (37 & 38 Vict., c. 57, sec. 7.) In this case there is no further period allowed for disabilities (Forster v. Paterson, 17 Ch. D., 132).

Q. (a) *On the death of a sole mortgagee of freeholds, to whom should the mortgage debt be paid, and by whom may the mortgaged estate be conveyed to the mortgagor? State what the law formerly was upon this point, and how it was altered.* (b) *On the death of a mortgagor, out of what property is the mortgage debt primarily payable? What was the old law upon this point, and how was it altered?*

A. (*a*) Under section 30 of the Conveyancing Act 1881, the mortgage money will be paid to the personal representatives of the mortgagee, who are also the proper persons to reconvey. Formerly, the money would have been paid to the personal representatives, and the heir or devisee (as the case may be) would have been the person to reconvey. (*b*) Formerly, out of the general personal estate, but now, under 17 & 18 Vict., c. 113, out of the mortgaged estate itself, unless there is a contrary intention expressed in the mortgagor's will, and a mere general direction for payment of debts is not a sufficient contrary intention (30 & 31 Vict., c. 69). The 17 & 18 Vict., c. 113, did not formerly apply to leaseholds, but it does now (40 & 41 Vict., c. 34). (As to these Acts, see also *post*, page 207.)

Q. Define the equitable doctrine of tacking, and show how it has been affected by recent legislation.

A. It is the uniting of two incumbrances with the view of squeezing out an intervening one, prior in point of time to the security tacked, and it depends on the maxim, "Where the equities are equal, the law shall prevail." The third advance must have been made without notice of the second. Tacking was abolished by the Vendor and Purchaser Act 1874, which came into operation on 7th August, 1874; but this provision was repealed by the Land Transfer Act 1875, except as to anything done before 1st January, 1876. (Marsh v. Lee, and Notes, Indermaur's Conveyancing and Equity Cases.)

Q. A mortgaged Blackacre to B for one sum; he afterwards mortgaged Whiteacre to B for another sum. Blackacre is an insufficient security for the money lent upon it, and A, therefore, does not wish to redeem it; but he wishes to redeem Whiteacre, which is an ample security for the money lent upon it. State what were the rights of the mortgagee before the Conveyancing Act 1881 *came into operation, and what change in the law was made by that Act?*

A. Before the Conveyancing Act 1881, the mortgagee might have consolidated his mortgages, and refused to allow the mortgagor to redeem one without redeeming both. By sec. 17 of that Act, a mortgagor may redeem the property comprised in one mortgage, without paying any money due under a separate mortgage, provided one, at least, of the mortgages is made after 1881, unless the contrary is expressed in one of the mortgages. (See Vint v. Padget, and Notes in Indermaur's Conveyancing and Equity Cases; Pledge v. White (1896), A. C., 187; 65 L. J., Ch., 449.)

Q. When, and to whom, is a mortgagee bound to transfer the mortgage, and to assign the mortgage debt?

A. He has always been bound, on payment off by any person entitled to redeem, to reconvey or transfer the estate.

Formerly, he was not bound to assign the mortgagé debt itself; but he is now under sec. 15 of the Conveyancing Act 1881. The Conveyancing Act 1882 provides that a requisition for conveyance and assignment made by an incumbrancer shall prevail over one by the mortgagor; and, as between incumbrancers, a requisition of a prior incumbrancer shall prevail over that of a later incumbrancer.

Q. What statutory powers does the owner of a legal rent-charge possess if the rent-charge was created by deed since 1881? I. 105.

A. (*a*) If the rent-charge is in arrear for 21 days a power of distress; (*b*) if in arrear for 40 days, power to enter into possession and take the income till satisfaction; or instead, or in addition, (*c*) power to demise the land to a trustee for a term of years on trust (by way of mortgage, or sale, or demise, of the whole, or any part, of the term) to raise the money to satisfy arrears. These powers are subject to any contrary provisions in the instrument creating the rent-charge.

Q. What are the provisions of Locke King's Acts, otherwise known as the Real Estates Charges Acts?

A. The general effect of these Acts is that—when real estate (17 & 18 Vict., c. 113) or chattels real (40 & 41 Vict., c. 34) are devised to a devisee, or descend on intestacy (17 & 18 Vict., c. 113, and 40 & 41 Vict., c. 34) charged with any mortgage debt (17 & 18 Vict., c. 113) or lien for unpaid purchase-money (30 & 31 Vict., c. 69, and 40 & 41 Vict., c. 34), or any other equitable charge (40 & 41 Vict., c. 34; Anthony v. Anthony, 61 L. J., Ch., 434)—in all cases the person who gets the property takes it subject to the charge, unless a contrary intention is plainly expressed by the will. A charge or direction for the payment of debts is not a contrary intention (30 & 31 Vict., c. 69).

Q. Explain the nature of an equitable mortgage, and describe the various remedies to which the mortgagee is entitled.

A. It is created by a deposit of title deeds with or

without a memorandum in writing, or by a memorandum without deposit; and is permitted from necessity, notwithstanding sec. 4 of the Statute of Frauds (Russel v. Russel, Indermaur's Conveyancing and Equity Cases). The remedies are (1) action of debt; (2) action of foreclosure, in which the Court has a discretion to order a sale under sec. 25 (2) of the Conveyancing Act 1881; and (3) if there is a memorandum agreeing to give a legal mortgage, the mortgagee has a right to a sale, enforceable by action.

Q. Describe the different forms of debenture, and show in what cases such securities are assignable free from equities affecting the assignor.

A. (1) Mortgage debentures, *i.e.*, secured by a mortgage on property; bonds, *i.e.*, deeds; and instruments not under seal containing a promise to pay. (2) Terminable, *i.e.*, payable after a certain time, or notice, or being drawn for redemption; and Perpetual, *i.e.*, payable on default in paying interest. They are usually issued by joint stock companies to secure repayment of money borrowed or to pay for property bought or services rendered. The *primâ facie* rule is that debentures can only be assigned, subject to the equities existing between the original parties to the contract; but this rule will yield to a contrary intention appearing from the nature or terms of the contract, *e.g.*, where payable to bearer or holder. (Goodeve's Personalty, 2nd edition, 317.)

16.—Title and Miscellaneous Points.

Q. What are the enactments of the Vendor and Purchaser Act 1874, *and the Conveyancing Acts* 1881 *and* 1882, *with respect to the title to be shown by a vendor of freehold and leasehold land respectively?*

A. As to freeholds, 40 years' title must be shown; but, if a deed 20 years old at the date of sale contains a recital that the then owner was seised in fee simple free from incumbrances, the purchaser cannot call for any prior title

unless he can prove that statement to be false. As to leaseholds, the title always begins with the lease itself, and the purchaser cannot call for the title to the freehold or leasehold reversion. See fully as to details, secs. 1 and 2 of the 1874 Act; secs. 3 and 13 of the 1881 Act; and sec. 4 of the 1882 Act. A person who contracts to grants an underlease may be compelled to produce the lease under which he holds (*Re* Gosling and Woolf (1893), 1 Q. B., 39).

Q. What title to land is a purchaser, in the absence of special stipulation, entitled to require in the following cases: —(a) *freeholds*, (b) *leaseholds*, (c) *enfranchised copyholds*, (d) *an advowson*, (e) *tithes?*

A. (*a*) Forty years. (*b*) The lease itself and the subsequent title thereto not exceeding forty years. (*c*) Forty years; but if the enfranchisement took place within that period, the Conveyancing Act 1881 forbids him calling for the title of the lord to make the enfranchisement. (*d*) 100 years. (*e*) The original grant from the Crown must be produced, and forty years' title prior to the contract shown.

Q. State shortly the provisions of the statutes now governing the right to bring an action for the recovery of land. What are the special provisions with respect to actions by a tenant in tail?

A. The Act really governing this subject is the Real Property Limitation Act 1874 (37 & 38 Vict., c. 57), though to a certain extent the prior statutes of 3 & 4 Wm. 4, c. 27, and 7 Wm. 4 & 1 Vict., c. 28, remain in force. The law may be shortly summarised as being that an action to recover land, rent-charges, mortgage debts on land, legacies, and judgment debts, must be brought within 12 years from the date when the cause of action accrued, with a further period (as to land and rent-charges) of six years in the case of disabilities, but no action can be brought after 30 years. In the case of concealed fraud, time does not begin to run until the fraud has, or with reasonable diligence

might have, been discovered. Special provisions are made with regard to estates in remainder, and with regard to tenants in tail it is provided (sec. 6) that in case of possession under an assurance by a tenant in tail which shall not bar the remainders, they shall nevertheless be barred at the end of 12 years after that period at which the assurance, if then executed, would have barred them.

Q. State the law relating to insurable interests as affecting policies of life insurance.

A. By 14 Geo. 3, c. 48, contracts of life insurance are void, unless the person for whose benefit the assurance is effected has an insurable interest of a pecuniary nature in the life insured at the time when the insurance is effected; the name of the person in whose favour the policy is taken out must be stated in it; and only the amount of the insurable interest can be recovered. A man may insure his own life; husband and wife may insure in each other's favour; a creditor may insure his debtor's life to the amount of his debt.

Q. Describe the nature of the contract of life assurance, and state the effect of the Married Women's Property Act 1882, *on contracts of this kind.*

A. It is not a mere contract of indemnity, but is a contract to pay a certain sum of money on the death of a person in consideration of due payment of an annuity for his life. (Dalby v. India and London Life Assurance Company, Indermaur's Common Law Cases.) By sec. 11, the wife may effect an insurance on her own life, or her husband's, for her separate use; and either may effect an insurance on his or her life, expressed to be for the benefit of the other, or the children, or both, which will create a trust for the declared objects, and prevent the policy moneys (so long as any object of the trust remains unperformed) forming part of the estate, or being responsible for the debts of the insured; but on proof that the policy was effected and premiums were

paid to defraud the insured's creditors, the creditors are entitled to receive such premiums out of the policy moneys. The insured may, by the policy or a signed memorandum, appoint trustees of the policy moneys, and appoint new trustees, and provide for so doing and for investment of the moneys. If no other trustee is appointed, the insured is trustee. The Court can appoint new trustees under the Trustee Act 1893. The receipt of the trustee, or (if none, or if he gives no notice to the insurance office) of the insured's personal representative, is a good discharge for the policy monies.

Q. What is a satisfied term, and what protection can it afford to the inheritance? Refer to the Satisfied Terms Act.

A. A satisfied term is a term, the object for the creation of which has been accomplished; the term still exists, unless there was a proviso for its cessor in the instrument creating it. It is generally a long term of years vested in the trustees of a settlement for raising portions for younger children. It can now afford no protection to the inheritance because of the Act. But formerly where the owner in possession was liable to be evicted by some one claiming under a title, prior to his own but subsequent to the creation of the term, the owner used to take an assignment from the trustees in trust for himself to attend upon and protect his inheritance. And if, afterwards, the owner's title were assailed, he could set up the term and hold under it till it expired. But by 8 & 9 Vict., c. 112, all terms satisfied and attendant on 31st December, 1845, were to cease, but afford the same protection as if they still existed; and all satisfied terms becoming attendant after that date were to cease without affording any protection.

Q. Describe the incidents of a corporation, and state the principal classes into which corporations may for legal purposes be divided.

A. A corporation is an artificial personage created by law

and endowed by it with the quality of a perpetual existence and a corporate seal. It may be either *ecclesiastical, e.g.*, a bishop, or a dean and chapter, in which case it is formed solely of spiritual persons and for the furtherance of religion and perpetuation of the rights of the Church, or *lay*. Lay corporations are either *civil* or *eleemosynary*. Any corporation may be either *aggregate*, composed of more persons than one, or *sole*. It may arise by special Act of Parliament, or Royal Charter, or under the Companies Act 1862, or may exist as a corporation at Common Law or by prescription.

Q. In what different ways may a corporation be dissolved?

A. (1) By Act of Parliament; (2) by the natural death of all its members in the case of a corporation aggregate; (3) by surrender of its franchises; (4) by forfeiture of its charter. As regards a company registered under the Companies Act 1862, that is liable to be wound up either voluntarily, or under the supervision of the Court, or compulsorily by the order of the Court.

Q. State the rules under which protection is attainable for paintings, drawings, and photographs.

A. By 25 & 26 Vict., c. 68, the author (being a British subject or resident within the dominions of the Crown) of any painting or drawing, or the negative of any photograph, shall have the copyright therein for his life and seven years; but if the same shall, for the first time after 29th July, 1862, be sold or disposed of, or made or executed for a good or valuable consideration, the vendor or author shall not have the copyright therein unless expressly reserved to him at the time by signed agreement, but it shall belong to the purchaser or person for whom executed, nor shall the vendee or assignee be entitled to the copyright unless expressly so agreed in signed writing. Such copyright is personal estate; must be registered at Stationers' Hall to give a right enforceable by action; and assigned by writing. Penalties are imposed for infringement.

Q. Define a "patent." State shortly the provisions of the present law regulating the grant and protection of patents, as regards the mode of application for, extent and duration, and revocation and assignment, of patents.

A. The privilege granted by the Crown to the first inventor in this realm of any new contrivance in the manufactures, that he alone, for a limited time, shall make a profit out of his invention. The grant and protection of a patent is now regulated by the Patents Designs and Trademarks Acts 1883-1888. Anyone may apply for a patent, the application is sent to the Patent office with a declaration that the applicant (or one of them) is the true and first inventor in this realm, and a specification (provisional or complete), giving the details of the invention; the comptroller refers the application to the examiner; if the latter reports favorably, the application is accepted and advertised; and if no successful opposition is made, the patent is sealed. The patent extends through the United Kingdom and the Isle of Man, and endures for 14 years, but may then be renewed by the Privy Council for 7 (or 14) years if the patentee has not gained adequate remuneration. Revocation is by a petition to the High Court by the Attorney General, or his nominee, or any one who alleges the patent was obtained by fraud, or that he is the true inventor, or that the invention is not new. The assignment must be by deed, and may be partial. (Goodeve's Personalty, c. 9; Indermaur's Common Law, 7th edition, 209.)

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